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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 422

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

No. 423

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 30, 1936

CERTIORARI GRANTED NOVEMBER 9, 1936

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IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

1

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., Respondent.	October Term, 1935 No. 14657

2

Petition for the Enforcement of an Order of the National Labor Relations Board.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to authority conferred upon it by the provisions of an Act of Congress, approved July 5, 1935 (Public No. 198, 74th Congress, 49 Stat. 10, 29 U. S. C. A., Chap. 7, Sec. 160(e).) known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted against respondent, Friedman-Harry Marks Clothing Company, Inc. Said proceeding is known upon the records of the Board as Case No. C-40, the title thereof being "In the Matter of Friedman-Harry Marks Clothing Company, Inc. and Amalgamated Clothing Workers of America."

3

Petition for the Enforcement of an Order of the National Labor Relations Board

4 In support of such petition, petitioner respectfully shows:

(1) Respondent, Friedman-Harry Marks Clothing Company, Inc., is, and at all times herein mentioned was, a corporation organized under and existing by virtue of the laws of the State of Virginia, is authorized to do business under the laws of the State of New York and has offices and transacts business at New York, New York.

(2) By reason of the matters alleged in para-
5 graph (1) hereof, the Court has jurisdiction of this petition under Section 10 (e) of the said National Labor Relations Act.

(3) On the 26th day of October, 1935, a charge having previously been filed with the Board by the Amalgamated Clothing Workers of America, the Board issued its complaint charging that the respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act. On the 26th day of October, 1935, said complaint,
6 together with a notice of hearing thereon, was duly served upon respondent. Thereafter, on or about the 4th day of November, 1935, the respondent filed its answer to the said complaint.

(4) Thereafter, after adjournments on the 6th and 12th day of November, 1935, on the 5th day of December, 1935, a trial examiner, duly designed by the Board for the purpose, held a hearing on the charges stated in said complaint, pursuant to the

said notice of hearing. At said hearing, opportunity to present testimony and other evidence with respect to the charges stated in said complaint was given to the several parties to said proceeding, including respondent, who was present and represented by counsel.

(5) On the 28th day of March, 1936, the Board having duly considered the matter and being sufficiently advised in the premises and being of the opinion, upon all of the testimony and evidence, that respondent had been and then was engaging in certain unfair labor practices affecting commerce, within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondent:

"ORDER

On the basis of the findings of fact and conclusions of law pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Friedman-Harry Marks Clothing Company, Inc., and its officers and agents, shall:

1. Cease and desist (a) from discharging any of its employees or otherwise discriminating in regard to the tenure and conditions of their employment, and from threatening such action, for the reason that such employees have joined or assisted the Amalgamated Clothing Workers of America or otherwise engaged in

10 union activity; (b) from maintaining surveillance of the activities of the Amalgamated Clothing Workers of America and of the activities of their employees in connection with such organization; (c) from discharging or otherwise discriminating against any of its employees for filing charges or giving testimony under the National Labor Relations Act; and (d) from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to
11 bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

12 (a) Offer to Archer Brock, Robert Koch, Wilson Lane, Luella Nichols, Dorothy McAden, Bryce Williams, Sara Sheffield, and Reba Holder immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Archer Brock, Robert Koch, Wilson Lane, Luella Nichols, Dorothy McAden, Bryce Williams, Sara Sheffield, and

Reba Holder for the loss of pay they have 13
suffered by reason of the termination of their employment by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of termination of employment, as stated in the findings of fact, to the date of such offer of reinstatement, computed in this case by averaging the wages earned during said period by the employees engaged in the same operations, respectively, as were the above employees prior to the termination of 14
their employment;

(c) Post immediately notices to its employees in conspicuous places in the plant stating (1) that the respondent will cease and desist as provided in Paragraph 1 of this Order, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

And it is further ordered,

3. That the complaint be, and it hereby is, 15

dismissed with respect to the allegations of Paragraphs 6, 7, 8 and 9, the allegations of Paragraph 4 respecting Arnold Holder, Mrs. Gertrude Holder, Mrs. Robert Binns and Margaret Tunstall, and so much of the allegations of Paragraphs 11, 12 and 15 as depend upon the aforesaid allegations."

Petition for the Enforcement of an Order of the National Labor Relations Board

16 6. The said order was duly served upon respondent and is, and at all times since its said issuance and service has been, in full force and effect.

WHEREFORE the Board petitions this Honorable Court for the enforcement of its said order of March 28th, 1936, and pursuant to Section 10 (e) of said National Labor Relations Act certifies and files with this petition a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact and said order of the Board.

17 The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, and that this Court take jurisdiction of the proceeding and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order made thereupon, a decree enforcing in whole said order of the Board and commanding respondent, its officers, agents and representatives, to comply therewith.

18 J. WARREN MADDEN,
Chairman.

JOHN M. CARMODY,
Member.

CHARLES FAHY, General Counsel,
National Labor Relations Board,
Washington, D. C.

ROBERT B. WATTS, Associate General
Counsel, National Labor Relations Board,

Petition for the Enforcement of an Order of the National Labor Relations Board

District of Columbia,
City of Washington, *ss.*:

J. Warren Madden and John M. Carmody, being duly sworn, depose and say that they are members of the National Labor Relations Board and make this affidavit on behalf of said Board; that they have read the foregoing petition and have knowledge of the facts stated therein; and that the statements made in the foregoing petition are true to the best of their knowledge and belief.

J. Warren Madden, Chairman,
National Labor Relations Board.

John M. Carmody, Member,
National Labor Relations Board.

Subscribed and sworn to before me
this 28th day of March, 1936.

(SEAL)

JOHN E. LAWYER
Notary Public, District of Columbia
My commission expires September 8, 1939.

Certificate of National Labor Relations Board

22

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., Respondent.	October Term, 1935 No. 14657

23

The National Labor Relations Board, by its Secretary duly authorized by Rule and Regulation of the National Labor Relations Board dated the 16th day of October, 1935, a copy of which rule and regulation is attached hereto and made a part hereof, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before

24

said Board entitled "In the Matter of Friedman-Harry Marks Clothing Company, Incorporated and Amalgamated Clothing Workers of America" the same being case No. C-40 before said Board, said transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

Certificate of National Labor Relations Board

(1) Copy of charge of Amalgamated Clothing Workers of America filed on October 4, 1935. 25

(2) Copy of the complaint and notice of hearing issued by the National Labor Relations Board on October 26, 1935.

(3) Copy of order of the National Labor Relations Board dated October 25, 1936, designating Trial Examiner.

(4) Copy of Special Appearance of Friedman-Harry Marks Clothing Company filed November 4, 1935. 26

(5) Copy of Answer of Friedman-Harry Marks Clothing Company filed November 4, 1935.

(6) Certified copy of stenographic report of hearing held on November 6 and November 12, 1935, and December 5, 1935 including Exhibits admitted in evidence.

(7) Copy of decision, findings of fact and order of National Labor Relations Board, dated March 28, 1936. 27

In testimony whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized, as aforesaid, has hereunto set his hand and affixed the Seal of the National Labor Relations Board, in the City of Washington, District of Columbia, this 28th day of March, 1936.

BENEDICT WOLF,
Secretary.

(SEAL)
National Labor Relations Board

Certificate of National Labor Relations Board

NATIO. AL LABOR RELATIONS BOARD

28

Washington, D. C.

Rule and Regulation authorizing the Secretary of the Board to certify copies of papers and documents

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby authorizes the Secretary to certify copies of all papers and documents which are a part of any of
29 the files or records of the Board as may be necesesary or desirable from time to time. This Rule and Regulation shall be effective upon its publication in the following manner, namely by the signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, at whose office the original shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C. this 16th day of October, 1935.

30 (Signed) J. Warren Madden, Chairman

(Signed) Edwin S. Smith, Member

(Signed) Jno. M. Carmody, Member

Charge

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of

FRIEDMAN-HARRY MARKS CLOTHING COMPANY,

and

AMALGAMATED CLOTHING WORKERS OF AMERICA

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Friedman-Harry Marks Clothing Company, Richmond, Virginia, has engaged in and is engaging in unfair labor practices within the meaning of said Act in that:

1. On September 18, 1935, it laid of Sara Sheffield because she was a member of the Amalgamated Clothing Workers of America.

2. That on August 2, 1935, it discharged Archer Brock because of his affiliation with the Amalgamated Clothing Workers of America.

3. That on August 16, 1935, it discharged Robert L. Koch because he was a member of the Amalgamated Clothing Workers of America.

Charge

4. That on September 19, 1935, it discharged
34 Bryce Williams because he was affiliated with the Amalgamated Clothing Workers of America.

5. That on September 6, 1935, it discharged Wilson Lane because he was affiliated with the Amalgamated Clothing Workers of America.

6. That on September 9, 1935, it discharged Mrs. Lula Nichols because of her affiliation with the Amalgamated Clothing Workers of America.

7. That on September 10, 1935, it discharged
35 Dorothy McAden because of her affiliation with the Amalgamated Clothing Workers of America.

8. That it has at various time laid off Doris Koch because of her affiliation with the Amalgamated Clothing Workers of America.

9. That it has discriminated against Mrs. Gertrude Holder because of her affiliation with the Amalgamated Clothing Workers of America, by giving her less work than non-union members.

36 10. That on September 26, 1935, it laid off Arnold Holder because of his affiliation with the Amalgamated Clothing Workers of America.

11. That on September 14, 1935, it laid off Miss Margaret Turnstall because of her affiliation with the Amalgamated Clothing Workers of America.

12. That on September 27, 1935, it laid off Hobert Holder because of his affiliation with the Amalgamated Clothing Workers of America.

Charge

13. That on September 26, 1935, it laid off Miss Reba Holder because of her affiliation with the Amalgamated Clothing Workers of America. 37

14. That on September 9, 1935, it laid off Mrs. Fagan because of her affiliation with the Amalgamated Clothing Workers of America.

15. That on September 16, and again on September 26 it laid off Mrs. Robert Binns because of her affiliation with the Amalgamated Clothing Workers of America.

16. That on August 1, 1935, it caused to be circulated and through its agents coerced various employees into signing a petition discouraging membership of its employees in the Amalgamated Clothing Workers of America. 38

17. That on or about September 5, 1935, it caused to be circulated and coerced its employees into signing a petition withdrawing the membership of various employees in the Amalgamated Clothing Workers of America.

18. That officers of the company have at various times addressed employees of the company and attempted to discourage their affiliation with the Amalgamated Clothing Workers of America. 39

19. That on or about September 7, 1935, it required as a condition of employment that John Gill, Heywood Tunstall and Floyd Chetty withdraw their membership in the Amalgamated Clothing Workers of America.

Charge

20. That on September 26, 1935, it discharged
40 Miss Sara Sheffield for filing charges against the company with the National Labor Relations Board.

21. That it has in other ways restrained, interferred with and coerced its employees in the exercise of their right of free choice of representatives for collective bargaining.

The undersigned further charges that said labor practices are unfair labor practices affecting commerce within the meaning of said Act.

AMALGAMATED CLOTHING WORKERS
41 OF AMERICA

By: John Hirschberg,
Attorney.

Subscribed and sworn to before me this 28th day of September, 1935, by John Hirschberg, Attorney and Agent for Amalgamated Clothing Workers of America.

B. Harrison Turnbull
42 Commissioner in Chancery of the Law and Equity Court of the City of Richmond, State of Virginia.

Complaint

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

It having been charged by the Amalgamated Clothing Workers of America, Labor Temple, Richmond, Virginia, that the Friedman-Harry Marks Clothing Company, Incorporated, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices, affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Fifth Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, (General Rules and Regulations) Article IV, Section 1, hereby issues this complaint and alleges the following:

1. The respondent is and has been since March 5, 1932, a corporation organized under and exist-

ing by virtue of the laws of the State of Virginia,
46 having its principal office and place of business in the City of Richmond, State of Virginia, and is now and has continuously been engaged at a place of business in the City of Richmond, State of Virginia, (hereinafter called the Richmond Plant) in the production, sale and distribution of men's clothing.

2. The respondent in the course and conduct of its business causes and has continuously caused the raw materials used in the production of its men's clothing to be purchased and transported in
47 interstate commerce from and through the states of the United States other than the State of Virginia to the Richmond Plant in the State of Virginia, and causes and has continuously caused substantially all the men's clothing produced by it to be sold and transported in interstate commerce from the Richmond Plant in the State of Virginia to, into and through states of the United States other than the State of Virginia, all of aforesaid constituting a continuous flow of commerce among the several states.

48 3. The respondent, by its officers and agents, while operating the Richmond Plant as described above, did terminate the employment of Archer Brock on August 2, 1935, Robert Koch on August 16, 1935, Wilson Lane on September 6, 1935, Mrs. Louella Nichols on September 9, 1935, Dorothy McAden on September 10, 1935, Brice Williams on September 19, 1935, and Sara Sheffield on September 26, 1935, and each of them on said dates, all being employed in production at the said plant, and

has at all times since said dates refused to reinstate the said persons, and each of them. 49

4. The respondent, by its officers and agents, while operating at the Richmond Plant as described above, did lay off for brief periods of time Arnold Holder on September 26, 1935, Mrs. Doris Koch on September 9 and September 13, 1935, Mrs. Gertrude Holder on September 10 and September 11, 1935, Mrs. Robert Binns on September 26, 1935, Margaret Tunstall on September 14, 1935, Reva Holder on September 26, 1935, and Hobert Holder on September 27, 1935, and each of them on said dates, all being employed in production at the said plant. 50

5. The respondent, by its officers and agents, terminated the employment of and refuses to reinstate said Archer Brock, Robert Koch, Wilson Lane, Mrs. Louella Nichols, Dorothy McAden, Brice Williams and Sara Sheffield, and each of them, and did lay off Arnold Holder, Mrs. Doris Koch, Mrs. Gertrude Holder, Mrs. Robert Binns, Margaret Tunstall, Reva Holder and Hobert Holder, and each of them, for the reason that all of the said employees, and each of them, joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection. 51

6. The respondent, by its officers and agents, on or about August 1, 1935, and down to and including the date of the filing of this complaint, while

operating at the Richmond Plant as described
52 above, did cause to be circulated for the signature of many of its employees engaged in production at the said plant, a petition stating as follows:

> "In view of the stubborn efforts on the part of certain organizers to create dissatisfaction and discord among us, we, the employees of Freedman-Harry Marks Clothing Co., want to take this means of conveying to our employer our loyalty to the firm and the satisfaction of our working conditions. For the last number of weeks many of our homes have been visited
> 53 by the so-called organizers, who, even against our wishes, persist in doing everything possible to stir up trouble in our factory.
>
> "We know better than anyone else, that the things they tell us and the statements they give the newspapers are falsehoods; we know that our employers have lived up to the promises they made to us when the N. R. A. was declared unconstitutional. The visits on the part of the organizers are unsolicited and uninvited, we would appreciate their refraining from intruding upon the privacy of our homes.
> 54 "We want our employers and anyone else interested, to know that we are happy with our working conditions, and what we particularly desire now is that we be allowed to enjoy them peacefully."

7. The respondent, by its officers and agents, while operating at the Richmond Plant as described above, did urge, persuade, and warn its employees as aforesaid, and each of them, to sign the said

petition, and did threaten their employees as aforesaid, and each of them, with discharge if they failed to sign the said petition. 55

8. The respondent, by its officers and agents, on or about September 5, 1935, while operating at the Richmond Plant as described above, did cause to be circulated for the signature of certain of its employees engaged in production at the said plant, a petition stating that "The undersigned wish to withdraw our applications with the Amalgamated Clothing Workers of America", and did urge, persuade, and warn its employees as aforesaid, and each of them, to sign the said petition, and did threaten their employees as aforesaid, and each of them, with discharge if they failed to sign the said petition. 56

9. The respondent, by its officers and agents, while operating at the Richmond Plant as above described, did require on or about September 7, 1935, that John Gill, Heywood Tunstall and Floyd Chetty, employed in production at the said plant, and each of them, withdraw their membership in the Amalgamated Clothing Workers of America as a condition of retaining their employment. 57

10. The respondent, by its officers and agents, while operating at the Richmond Plant as described above, terminated the employment of and refuses to reinstate Sara Sheffield, as set forth in paragraph three (3) above, for the reason that the said Sara Sheffield filed charges under the National Labor Relations Act.

11. The respondent, by terminating the employ-
58 ment of Archer Brock, Robert Koch, Wilson Lane, Mrs. Louella Nichols, Dorothy McAden, Brice Williams and Sara Sheffield, and each of them, and refusing to reinstate the said persons, and each of them; by laying off Arnold Holder, Mrs. Doris Koch, Mrs. Gertrude Holder, Mrs. Robert Binns, Margaret Tunstall, Reva Holder and Hobert Holder, and each of them; by causing to be circulated the petitions more fully described in paragraphs six (6) and eight (8) above, and by urging, persuading, warning and threatening its employees, and each of them, in procuring signatures thereto; and
59 by the conditions of employment imposed upon John Gill, Heywood Tunstall and Floyd Chetty, and each of them; all as more fully set forth above, and by all of said acts and each of them, did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

60 12. The respondent, by terminating the employment of said Archer Brock, Robert Koch, Wilson Lane, Mrs. Louella Nichols, Dorothy McAden, Brice Williams, and Sara Sheffield, and each of them, and refusing to reinstate said persons, and each of them; by laying off Arnold Holder, Mrs. Doris Koch, Mrs. Gertrude Holder, Mrs. Robert Binns, Margaret Tunstall, Reva Holder and Hobert Holder, and each of them; by causing to be circulated the petitions more fully described in para-

graphs six (6) and eight (8) above, and by urging, persuading, warning and threatening its employees, and each of them, in procuring signatures thereto; and by the conditions of employment imposed upon John Gill, Heywood Tunstall and Floyd Chetty, and each of them; all as more fully set forth above, and by all of said acts and each of them, did discriminate and is discriminating in regard to the hire and tenure of employment of all the aforesaid persons and each of them, and did impose and is imposing terms and conditions of employment upon its employees, and by all of said acts and each of them, did discourage and is discouraging membership in the Amalgamated Clothing Workers of America, and by all of said acts and each of them, did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act. 61 62

13. The respondent, by its discharge of Sara Sheffield, as set forth in paragraph ten (10) above, did engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (4) of said Act.

14. The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof. 63

15. The aforesaid acts of respondent, enumerated in paragraphs three (3) to fourteen (14), in-

clusive, constitute unfair labor practices affecting
64 commerce, within the meaning of Section 8, subdivisions (1), (3) and (4), and Section 2, subdivisions (6) and (7) of said Act.

WHEREFORE, the National Labor Relations Board on the 26th day of October, 1935, issues its complaint against the Friedman-Harry Marks Clothing Company, Incorporated, respondent herein.

NOTICE OF HEARING

65 PLEASE TAKE NOTICE that on the sixth day of November, 1935, at 10 o'clock in the forenoon, at Hearing Room, Fourth Floor, State Office Building, Richmond, Virginia

a hearing will be conducted before the National Labor Relations Board, by its agent, Colonel Henry G. Perring designated in accordance with said Rules and Regulations, Series 1, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear,
66 in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Fifth Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, within five (5) days from the date of service of the said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pur-

suant to authority granted in the National Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Regional Director for the Fifth Region on the 26th day of October, 1935.

BENNET F. SCHAUFFLER,
Regional Director for
the Fifth Region,
601 Appraisers Store Building,
Baltimore, Maryland.

Order Designating Trial Examiner

70 UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

At a special meeting of the National Labor Relations Board, held in Pittsburgh, Penna., on the 25th day of October, 1935.

PRESENT:

J. Warren Madden, Chairman
John M. Carmody
Edwin S. Smith

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FRIEDMAN-HARRY MARKS CLOTHING COMPANY, a Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

A charge having been filed in this matter, and it having appeared to the Regional Director of
72 the 5th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that Harry G. Perring act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf,
Secretary.

Objections

Comes now Friedman-Harry Marks Clothing Company, Inc., by Weinberg & Sweeten, its attorneys, and appearing specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board and of J. Warren Madden, Chairman, John M. Carmody, Edwin S. Smith, Members, and of the Regional Labor Director of the National Labor Relations Board for the Fifth Region, Bennet F. Schauffler, and of the Trial Examiner of the National Labor Relations Board, Henry G. Perrin, does object in that certain proceeding entitled: 73

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR 74

RELATIONS BOARD

FIFTH REGION

In the Matter of

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., a corporation

and 75

AMALGAMATED CLOTHING WORKERS OF AMERICA

Case No. V-C-1

to the jurisdiction of said National Labor Relations Board and J. Warren Madden, Chairman, John M. Carmody, Edwin S. Smith, Members, and of the National Labor Relations Director of the

Objections

National Labor Relations Board for the Fifth
76 Region, Bennet F. Schauffler, and of the Trial Examiner of the National Labor Relations Board, Henry G. Perrin, in said proceeding, and to the jurisdiction of said National Labor Relations Board and J. Warren Madden, Chairman, John M. Carmody, Edwin S. Smith, Members, and of the National Labor Relations Director of the National Labor Relations Board for the Fifth Region, Bennet F. Schauffler, and of the Trial Examiner of the National Labor Relations Board, Henry G. Perrin, over Friedman-Harry Marks Clothing
77 Company, Inc., on the following grounds:

1. That the National Labor Relations Act, approved July 5, 1935 (Public No. 198—74th Congress) is invalid, void and in contravention of the rights, immunities and privileges of said Friedman-Harry Marks Clothing Company, Inc., under the Constitution of the United States of America in that it appears from the face of the proceeding that Friedman-Harry Marks Clothing Company, Inc., is not susceptible of legislation within the meaning of Article I, Section 8 of the Constitution of the
78 United States and that, therefore, as applied against said Friedman-Harry Marks Clothing Company, Inc., said National Labor Relations Act is in violation of Articles Nine and Ten of the Amendments to the Constitution of the United States, which reserve to the people of the United States all rights and powers not delegated in the said Constitution to the Government of the United States.

2. That the matters alleged in the complaint involve transactions and relations between employer

and employes, which are purely local in character and are not subject to regulation or legislation by 79
the Congress of the United States, under and by virtue of the provisions of and the reservations contained in Articles Nine and Ten of the Amendments to the Constitution of the United States.

3. That said National Labor Relations Act is invalid, void and in contravention of the rights, privileges and immunities of said Friedman-Harry Marks Clothing Company, Inc., in that it delegates legislative powers to the National Labor Relations Board, contrary to and in violation of Article One 80
of the Constitution of the United States, which vests all legislative powers in the Congress of the United States and regulates the manner in which all laws shall be adopted and approved, and that it delegates judicial powers to the National Labor Relations Board, contrary to and in violation of Article Three of the said Constitution of the United States, which vests the judicial powers of the United States solely in the Courts thereof.

4. That the appointment of the Regional Director of the National Labor Relations Board for the 81
Fifth Region, the filing of charges against Friedman-Harry Marks Clothing Company, Inc., that the calling of a hearing in the above mentioned proceeding, th[illegible]e appointment of a Trial Examiner and that a[illegible]eps heretofore taken or hereafter to be taken by said National Labor Relations Board in the proceeding are invalid, void and in contravention of the rights, privileges and immunities of said Friedman-Harry Marks Clothing Company, Inc., in that they constitute assumption and dele-

gation of legislative and judicial powers in viola-
82 tion of Articles One and Three of the Constitution of the United States.

5. That said National Labor Relations Act, and particularly Sections 2, 7 and 8 thereof, is invalid, void and in contravention of the rights, privileges and immunities of said Friedman-Harry Marks Clothing Company, Inc., in that it contravenes the Thirteenth Amendment to the Constitution of the United States, which prohibits involuntary servitude and the Fifth Amendment to the Constitution of the United States, which prohibits the depriva-
83 ion of private property without due process of law, because such Act, and the acts of the said National Labor Relations Board, Regional Director of said National Labor Relations Board for the Fifth Region and the Trial Examiner claimed to be done pursuant thereto, deprive said Friedman-Harry Marks Clothing Company, Inc., of its liberty and property without due process of law.

6. That said National Labor Relations Act and the National Labor Relations Board, the Regional Director and Trial Examiner, claiming to act pur-
84 suant thereto, seek to abridge the right of freedom of speech of Friedman-Harry Marks Clothing Company, Inc., contrary to and in violation of the First and Fifth Amendments to the Constitution of the United States.

7. That the National Labor Relations Act, particularly Section 10 thereof, and the National Labor Relations Board, particularly in its order ap-

pointing a Trial Examiner, the Regional Director of said National Labor Relations Board for the Fifth Region and the said Trial Examiner, claiming to act in pursuance of said National Labor Relations Act, deny Friedman-Harry Marks Clothing Company, Inc., the right of trial by jury and the right to have the facts so tried, examined in a Court of the United States according to the rules of common law, contrary to and in violation of Articles Six and Seven of the Amendments to the Constitution of the United States. 85

8. That said National Labor Relations Board, said Regional Director of said National Labor Relations Board for the Fifth Region and said Trial Examiner are seeking to exercise and are exercising powers contrary to and in violation of Articles One and Three of the Constitution of the United States and the Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Thirteenth Amendments to said Constitution of the United States. 86

FRIEDMAN-HARRY MARKS CLOTHING CO., INC.
By: Weinberg & Sweeten
By: Leonard Weinberg 87
Its Attorneys

Answer

88 UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

Fifth Region

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, a Corporation *and* 89 AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

Friedman-Harry Marks Clothing Company, Incorporated, in filing this Answer, does not waive, but specifically and expressly reserves all rights which it now has, or may have in the future, to take any and all legal steps which it may deem to be necessary or desirable now or in the future to question the constitutionality and validity of the
90 National Labor Relations Act, and all matters and things done or claimed to have been done thereunder, or in contemplation, and the jurisdictions and powers of the National Labor Relations Board, the Regional Labor Relations Board for the Fifth Region, the Regional Labor Director for the Fifth Region, the Trial Examiner and all others claiming to act under the said National Labor Relations Act.

ANSWER OF FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

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Comes now Friedman-Harry Marks Clothing Company, Incorporated, named as respondent in the above entitled matter, and makes Answer as follows:

1. It admits the allegations contained in paragraph 1 of the Complaint.

2. It denies the allegations contained in paragraph 2 of the Complaint.

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3. It admits the allegations contained in paragraph 3 of the Complaint, except that it denies that it "has at all times since said dates refused to reinstate the said persons, and each of them".

4. It admits the allegations contained in paragraph 4 of the Complaint.

5. It denies the allegations contained in paragraph 5 of the Complaint.

6. It denies the allegations contained in paragraph 6 of the Complaint. 93

7. It denies the allegations contained in paragraph 7 of the Complaint.

8. It denies the allegations contained in paragraph 8 of the Complaint.

9. It denies the allegations contained in paragraph 9 of the Complaint.

10. It denies the allegations contained in para-
94 graph 10 of the Complaint.

11. It denies the allegations contained in paragraph 11 of the Complaint.

12. It denies the allegations contained in paragraph 12 of the Complaint.

13. It denies the allegations contained in paragraph 13 of the Complaint.

14. It denies the allegations contained in para-
95 graph 14 of the Complaint.

15. It denies the allegations contained in paragraph 15 of the Complaint.

WHEREFORE, having answered each and every allegation of said Complaint, respondent moves that the Complaint filed against it be dismissed.

FRIEDMAN-HARRY MARKS
CLOTHING COMPANY, INC.
By: WEINBERG & SWEETEN
96 LEONARD WEINBERG,
Attorneys for Respondent
33rd floor Baltimore Trust
Building,
Baltimore, Maryland.

Hearings Before Board

BEFORE THE NATIONAL LABOR RELATIONS BOARD 97

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA 98	Case No. V-C-1

Hearing Room, Fourth Floor,
State Office Building,
Richmond, Virginia,
Wednesday, November 6, 1935.

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock a. m.

Before: 99

HENRY G. PERRING,

Trial Examiner

Appearances:

GERHARD P. VAN ARKEL, Regional Attorney, and A. L. WIRIN, Attorney, on behalf of the National Labor Relations Board.

JOHN HIRSCHBERG, 220 Broad Grace Arcade,
100 Richmond, Virginia, on behalf of Amalgamated Clothing Workers of America.

H. BLUMBERG, 15 Union Square, New York, N. Y., on behalf of Amalgamated Clothing Workers of America.

LEONARD WEINBERG and HARRY J. GREEN, of Weinberg & Sweeten, 33rd Floor, Baltimore Trust Building, Baltimore, Maryland, on behalf of Friedman-Harry Marks Clothing Company, Inc.

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PROCEEDINGS

Trial Examiner Perring: We have the case of Friedman-Harry Marks Clothing Company, Incorporated, v. Amalgamated Clothing Workers of America. Are you ready, gentlemen?

Mr. Wirin: We are ready.

Mr. Weinberg: How did I understand the Examiner titled the case—Friedman-Harry Marks Clothing Company against the Amalgamated?

Trial Examiner Perring: Well, the exact title
102 of it is Friedman-Harry Marks Clothing Company, Incorporated, and Amalgamated Clothing Workers of America.

Mr. Van Arkel: Mr. Examiner, I should like to call attention to the general rules and regulations of the National Labor Relations Board, Series 1, a copy of which I will give the reporter for the record.

(The papers referred to were filed and made a part of the record.)

Mr. Van Arkel: I should also like to introduce as National Labor Relations Board Exhibit No. 1 103
copies, certified by the Regional Director for the Fifth Region, of the Charge, Complaint and Notice of Hearing, Returns of Service, Designation of Examiner, Extension of Time for Filng Answer, Special Appearance of Respondent, Motion to Dismiss the Complaint, and Answer. Would you like to see these, Mr. Weinberg?

Mr. Weinberg: Yes, sir.

Mr. Van Arkel: Yes, sir (handing papers to Mr. Weinberg).

Trial Examiner Perring: They will be received as Board's Exhibit No. 1. 104

(The papers referred to were received in evidence and marked "Board's Exhibit No. 1.")

Mr. Van Arkel: May we have your leave to examine the witnesses seated, Mr. Examiner?

Trial Examiner Perring: Yes, sir.

Mr. Van Arkel: Mr. Blumberg, representing the Amalgamated Clothing Workers of America, is present and I would like to have him make a brief statement of the position of the Amalgamated 105
Clothing Workers of America.

Mr. Blumberg: Mr. Examiner, I appear here for—

Mr. Weinberg: Before that statement is made, perhaps it will help to shorten and to expedite this entire matter if we can make our position clear at the outset.

In this proceeding our client and ourselves are interested in only one thing, that is, whether or

not the National Labor Relations Board has any
106 jurisdiction whatever over our client, and whether or not the National Labor Relations Act is constitutional and valid, particularly with reference to the Friedman-Harry Marks Clothing of Richmond, Virginia.

It is our belief, as we have already expressed it in our special appearance here, which we have heretofore filed in this proceeding, that the National Labor Relations Act is invalid and unenforceable against our client, a Virginia corporation, which manufactures men's clothing only in its factory in the City of Richmond, employing only
107 workers living in the State of Virginia, the entire process of manufacture being confined wholly within this state.

Our client desires, Mr. Examiner, to obey the law, as it has always obeyed the law, every law which is valid and binding upon it.

As a matter of fact, today in this southern state, and without any legal requirement now upon us since the defunct N. R. A., we are paying the minimum wage of 40 cents an hour for 36 hours a week, to our workers.

In view of the extraordinary character of this
108 legislation, and the unprecedented demands that are being made under it, we desire to know at the earliest possible moment from the duly constituted courts of the United States, with whom we wish to be perfectly frank and honest in this proceeding, whether this law is or is not applicable to us. That being so, it really becomes unimportant, we respectfully submit, whether or not we are guilty of the allegations made in this complaint by the Amalgamated Union. For that reason, although

we absolutely and categorically deny those allegations, we have determined to try to save the Government and our client the time and the expense of a long-drawn out and protracted hearing, as to whether or not several workers out of a hundred workers were discharged or merely laid off for a few days, and whether or not that was done because they had or had not engaged in union activities. 109

Last night counsel for the National Labor Relations Board notified us that it would take a week or more, at least, in his judgment, for the submission of his evidence alone before we were called upon to produce our evidence. Therefore, we have determined not to cross examine any of the witnesses whom he produces on these allegations, and not to produce any witnesses of our own to controvert their testimony. 110

We suggest, therefore, in order to secure the early determination of the real point at issue in this matter, namely, the validity of this law, that if the attorneys of the National Labor Relations Board will submit a statement of what their witnesses will testify to we will admit that if these witnesses were present here and were called upon to take the stand that they would give the evidence contained in the stipulation so drawn. We were also notified by counsel for the Board last night that a demand would be made upon us today for us to produce and to disclose at this public hearing all of our private records of accounts as to our payrolls, as to the amounts of our purchases and from whom made, and the amounts of our sales and to whom made, and where and when the merchandise was shipped. We believe this to 111

be absolutely unwarranted—an absolute invasion
112 of our rights, and in order to be logical, to say the least, here, in the position that we have already taken, we must respectfully decline at this time to produce these records until we have been told by a duly constituted court of ultimate jurisdiction that we must do so in this proceeding.

Very succinctly that states our entire position.

Mr. Wirin: Mr. Examiner, may we have about two or three minutes to confer in order to decide on what to do in view of the statement made by counsel?

Trial Examiner Perring: Yes, surely.

113 Mr. Weinberg: May we have a five-minute recess?

Trial Examiner Perring: I might say that I have not seen the complaint nor the answer. Perhaps I might take a moment to look them over.

Mr. Weinberg: While you are doing that may we have a five-minute recess?

Trial Examiner Perring: Yes, sir.

(Thereupon a short recess was taken at the conclusion of which the following occurred:)

114 Mr. Wirin: Mr. Examiner, we have given some consideration to the suggestion made by Mr. Weinberg. We have not conferred with our chief authority, the Board, but it seemed to all of us that while we are just as anxious as is Mr. Weinberg to save time and inconvenience—his time as well as ours—that there ought to be a clarification as to what Mr. Weinberg would include in the terms of his stipulation, before we can go further, and these questions are directed to Mr. Weinberg and Mr. Green, his associate—

Trial Examiner Perring: May I interrupt just long enough to suggest this, that it might be that 115
you could have an unofficial conference with Mr. Weinberg and possibly straighten out some of these things, and then having decided on the course of action between the two of you, you could ask questions in open court.

Mr. Weinberg: As far as I am concerned, any questions that the gentleman asks in public rather than—

Mr. Wirin: We will be very glad to confer with Mr. Weinberg and follow that suggestion, your Honor, but before we do so we feel that there ought
to be some clarification of Mr. Weinberg's state- 116
ment because as it occurred to us it was ambiguous and was not clear.

Trial Examiner Perring: All right.

Mr. Wirin: So we think there will be some advantage in clearing that matter up first and then we can take it up further in these conferences.

Mr. Weinberg: If there is anything necessary to make our position clear I am prepared to make it clear here in public, now.

Mr. Wirin: That is our thought. We are in
agreement as to that. In the first place, since it is 117
Mr. Weinberg's primary interest to test out the constitutionality of the law as applying to the respondent, we assume his agreement to stipulate will include the agreement that all and every testimony we may have to offer shall be included in the record without any exception or limitations. What I mean by that; to clarify it further, is that Mr. Weinberg and his associate will not under any circumstance say, "This is not material and, there-

fore, it should not go in the record." In other words,
118 if this case is to proceed upon such testimony as we intend to offer, and if we are to have a stipulation as a substitute thereof, obviously, the record should contain all the testimony we would have introduced, whether Mr. Weinberg considers it material or not, at this hearing.

Mr. Weinberg: Is that the first question?

Mr. Wirin: No. Let me put the whole matter to you.

Mr. Weinberg: Yes, sir.

Mr. Wirin: In the second place, it has been our intention before the testimony in this case was
119 completed, to subpoena under the provisions of Section 11 of our act, certain persons, including officers of the respondent, and also to have issued orders of subpoena duces tecum against certain persons, and particularly against certain of the officers and employees of the respondent, which subpoena duces tecum would set forth the particular books, records and documents that would be ordered to be produced at this hearing. We assumed, of course, that since it was our original intention to subpoena such persons and records, that in addition to and supplemental to the writ-
120 ten record containing testimony of witnesses, that we would proceed without any delay, of course, with serving these subpoenas and have the matter of the return of the subpoenas disposed of by the Examiner for the purpose of the record.

Then, also, in view of counsel's desire not to concern himself with evidence at this time, but solely with the constitutionality of the Act, we assume that counsel will waive any right they may have or continue to have to present testimony

either before the Examiner or before the Board, or at any other time or before any other tribunal. 121

I have now stated what we assume because, obviously, an agreement to have this case heard, other than a full and complete hearing and the formal introduction of testimony, would not be a full hearing, the kind of hearing we would have if we proceeded with testimony, unless these matters which I have outlined would be clearly understood and included in that agreement.

Mr. Weinberg: I would like to take those questions up seriatim. We assumed that the stipulation, as we stated, would contain a statement of all the evidence that you say you intended to present, which we will admit your witnesses would testify to if produced—if they had been produced—without, of course, waiving our right to object to that testimony as to its materiality and relevancy—merely entering our objection to it. That answers your first question. 122

In answer to your second question with respect to whether or not we will also produce and put in the record our books, papers and accounts, we have already stated that we will not do so until ordered by a court to do so, on the assumption, (whether we are correct or not remains to be seen) that that is an absolutely unwarranted invasion of our rights under the law. Any steps that you desire to take with respect to that, of course, you will take. 123

Next—

Mr. Van Arkel: What was that last statement?

Mr. Weinberg: Any steps which you might desire to take with respect to our refusal to produce under subpoena, because we are telling you now that we will refuse to produce them under sub-

poena, whether you stipulate or do not stipulate—
124 we will not produce those records until that has been passed upon by a court. We say that respectfully and without any intent to be defiant to the Examiner, but understanding that to be the logical and necessary thing for us to do in view of the statement I have already made.

We will not maintain that you have been in any way prejudiced by the stipulation—

Mr. Van Arkel: Can not we agree that until such time as we have taken whatever action we deem necessary along the lines of obtaining this matter by subpoena that the record shall not be closed
125 at this hearing?

Mr. Weinberg: I do not want to make you today, at this moment, decide all of this if you wish some time to discuss it with the Board, or if you wish to have any reasonable time at all within which to determine just how you want to proceed or what you want to do, I will try to meet your convenience in every possible way. I assume you will always do the same thing for me. We certainly are not attempting here to hinder you, but we want to help in this matter as much as we can to allow both you and ourselves to get a real
126 determination of the question in which we are all interested.

To that end, also, with respect to the right to produce any testimony on our own part, your question as to whether or not we waive any or all right to produce any testimony of any character ourselves, I should say in answer to that that as to the facts of whether or not we discharged this young lady or that gentleman, or any of the other charges contained in that complaint which you have

filed, that we will not want at any time to offer any testimony with respect to that. 127

Now, it is conceivable to me as I stand here trying to answer your questions, that we might under certain circumstances if the National Labor Relations Board asks certain questions want to reserve the right to offer testimony with respect to how we conduct our business. I mean, frankly, the question of interstate commerce. If that became necessary to the determination of this matter over and above any testimony you offer, I would want to reserve the right, in view of the fact that you are not prepared at this moment to give your ultimate answer, to offer such testimony if it became necessary, merely for the purpose of presenting again the legal question so there would not be any doubt about that, but as to the facts in your complaint, as to discharging or circulating a petition, or laying people off because of Union activities, we will not desire any time, now or in the future, to offer any testimony with respect to that because we think that is all beside the point in which we are all really vitally interested. 128

Mr. Wirin: May I say this in reply to Mr. Weinberg. The reservation by Mr. Weinberg of the right to introduce evidence on interstate commerce features is, obviously, a reservation of grave importance. We understood from Mr. Weinberg's original suggestion that assuming everything we had to offer he would not or did not desire to offer any countervailing testimony, nor even to cross examine. Now, as to a matter which, unquestionably, is one in dispute as to facts, namely, the interstate commerce features involved, apparently Mr. Weinberg is not at present, at least, in a 129

position to agree that the same stipulation which
130 we assumed would apply to all facts would apply, also, to interstate commerce.

Mr. Weinberg: Let me correct you there.

Mr. Wirin: Do, please.

Mr. Weinberg: If you and I can agree on a stipulation with respect to that feature I am willing to make that stipulation, too. I am assuming that there may be some point of controversy between us with respect to that because you are raising some other questions, in which event I would simply want to offer either an affidavit or whatever is necessary in my opinion to cover
131 that situation in case you and I can not agree on that one feature.

Mr. Green: All that we want to do is to give a court of law sufficient evidence so it can determine whether or not we are engaged in interstate commerce. If you do that, we are satisfied. If you do not, then we will do it. We just want to make sure that when we go to court the court has some facts with respect to interstate commerce upon which to rule.

Mr. Wirin: In other words, as I understand
132 it, the stipulation is a stipulation that some evidence may be introduced without any rebuttal by counsel, but that other evidence, evidence which we consider of very grave importance on behalf of the Government, shall not go in under such circumstances?

Mr. Green: No. We will also stipulate any evidence you want to produce relating to interstate commerce. The only reservation we want to make is that if you do not stipulate anything relating to interstate commerce or not enough facts for a

court to determine the thing, that we also can produce enough so that the court can determine it. We are perfectly willing to stipulate that your witnesses would testify in the same manner to any facts that you say they will with respect to interstate commerce just the same as with respect to the other facts relating to the specific charges. 133

Mr. Van Arkel: Let me ask you this, Mr. Green, to clarify the record. Do you mean you want to reserve the right to introduce that evidence before Colonel Perring, or do you want to reserve that right for the National Labor Relations Board, in its discretion?

Mr. Green: Whichever suits you, or we may be able to stipulate between us the facts. Just so they are the facts for a court to pass upon. 134

Mr. Van Arkel: Could not we take another short adjournment, Mr. Examiner? I think we have clarified our position.

Mr. Wirin: Before that is done, may I call to the attention of the Examiner, and also to counsel, that, on the one hand, they are refusing to give us access, as is provided by our Act, to the records of respondent, which would produce evidence concerning the Interstate Commerce features of the respondent, while on the other hand they seek to reserve the right to themselves, after refusing us cooperation by allowing their books to be made available—they reserve the right to themselves to introduce somewhere in this record, somewhere in this proceeding, materials that will come from their records concerning, presumably, interstate commerce. 135

However, I agree entirely that it is a matter that should be discussed further, and if we may im-

pose upon your good nature again and ask for
36 another postponement, we will discuss it further and perhaps confer with the Board, and either arrive at an adjustment of some kind or not, in which event we will go forward with the case.

Mr. Van Arkel: Before we adjourn may I ask one question, Mr. Weinberg?

Mr. Weinberg: Yes, sir.

Mr. Van Arkel: In view of your desire to get before the court a full statement of the facts in the case which relate to interstate commerce, would it be possible for us to stipulate the facts with regard to interstate commerce after an exam-
37 ination of such records and such officers as is necessary?

Mr. Weinberg: No, sir. We do not intend to open our records to you under any circumstances until we are told to do so by a court. As I take it, we should not be blowing hot one minute and cold the next. Therefore, we want to be thoroughly logical in our position, if we can do so. I will attempt to stipulate with you the fact without going into all the details of that fact out of our records. What is the necessity for it? Why should we have to say to whom we sell these goods
38 and from whom we make our purchases? Just for the sake of argument, if we would be willing to agree, for instance, that our raw materials were purchased in South Carolina and in New York and in Michigan, let us say, you don't have to know from whom they are purchased and at what prices we purchased them. Therefore, we are not going to give you those facts.

If you want to know where we sold our merchandise and we are willing to stipulate that some

of it went into Georgia and some of it went into Texas, certainly you do not have to know to whom we shipped it or at what price we sold it. 139

Mr. Van Arkel: Of course, we have no interest in knowing to whom you sold it or anything like that.

Mr. Weinberg: Because we ship everything that we sell f. o. b. Richmond. Those are the facts. There is not any question about that, but we will tell you that we ship out of the state after we manufacture these goods. Of course, that which goes out of the state is delivered to a railroad and the railroad carries it out of the state.

Mr. Van Arkel: If a stipulation like that could 140 be carried into sufficient detail—

Mr. Weinberg: We are willing to do that. In fact, we are anxious that that be before the court.

Mr. Green: That is the only purpose of our making the reservation, to be certain that enough facts along that line get into the record to give the court something to pass upon.

Mr. Van Arkel: If we can do it by stipulation we are satisfied.

Mr. Wirin: There is just this difficulty, if I may be candid with the Examiner and with all of us, 141 while we do not question your good faith in the desire to arrive at a stipulation which will tell all the facts, it does happen that you are in possession of the facts and that we are not, and by your foreclosing the records of the company, by your refusing to comply with the order to produce the records, which we intend to secure in the form of a subpœna duces tecum, you put us to the disadvantage of having to rely on the facts exactly as you state them, without any opportunity—

Mr. Weinberg: You know as a lawyer that I
142 am already stating the facts necessary right at this moment, and that is all that I am admitting here, that we manufacture clothing in Richmond, Virginia; that it is manufactured from raw materials purchased from without this state; that once it is manufactured it is sold to merchants in various parts of the United States, in other states than Virginia; that after it is sold it is delivered to railroad or steamboat companies and by them delivered to our customers. Those are the facts. I am admitting them before you now, frankly and freely.

143 Mr. Wirin: Are you willing to admit further that that is true of 95 per cent of the volume of business transacted by the respondent?

Mr. Weinberg: If that is true. I would have to ask my client. If that is true I will be very glad to admit that.

Mr. Wirin: Will you ask the representative of your client?

Mr. Weinberg: I can tell you in perhaps a half an hour or so. I don't know whether they have ever attempted to find that out. I can tell you that
144 in half an hour. I should say that the majority of our merchandise is so shipped.

Mr. Wirin: That is not an answer to my question.

Mr.Weinberg: You want to know about 95 per cent. It may be that it is only 94 per cent. I don't know. A large majority is. I will make that statement.

Mr. Wirin: May I suggest we have a short adjournment, Mr. Examiner, and then we will have another conference.

Trial Examiner Perring: For how long do you want to recess? 145

Mr. Wirin: Twenty minutes.

Trial Examiner Perring: Will 20 minutes be long enough?

Mr. Van Arkel: It may take a little longer.

Trial Examiner Perring: All right. We will take a recess for half an hour.

(Thereupon a short recess was taken at the conclusion of which the following occurred:)

Mr. Wirin: Mr. Examiner, we have conferred again and we make report as to our conference, 146
but there is this one thing that I think I ought to call attention to, and that is, whatever is the disposal that is made of this matter, we ought to keep in mind at all times that there are human beings involved; that there are workers involved in this proceeding; that their rights have been violated, as contended by the Board; and that one of the parties to this proceeding is the Amalgamated Clothing Workers, who have a very important interest in the matter, and Mr. Blumberg will express the opinion of the Amalgamated, in so far as the proposition and counter-proposition have 147
been made thus far.

Mr. Blumberg: I have no interest nor any suggestions to make on the legality of the interstate commerce feature of this case—I know nothing about the constitutionality of the law—but I do know that there is a law pertaining to the rights of people to belong to a labor organization, and any agreement that is made should include those people. If the firm or counsel for the firm will

148 agree that the firm will desist from discharging people for membership in the Union, and reinstate the people that have been discharged since that law went into effect, then there could be no objections, so far as labor is concerned, to any agreement on the part of counsel. I would like to ask the attorney for the firm whether in an agreement that may be reached in this case that phase of it will be taken into consideration?

Mr. Weinberg: My answer to that is that we are not in the slightest interested at this moment in this controversy with what the Amalgamated Union wants, nor do we have to do what Mr.
149 Blumberg suggests under any circumstances.

Mr. Blumberg: I am speaking under the law as it is. I am not asking you to do it. If it be an agreement, all right, and if there can not be an agreement I would not, on the part of labor, make an agreement here that would be equal to nullifying the law until the Supreme Court of the United States acts. When the Supreme Court makes its decision labor will obey it, but any agreement here to put this case on a record without an understanding that a firm would desist from violating the law
150 until the Supreme Court did act, I think would be a betrayal on the part of labor for the entire labor movement. It would be the equivalent of nullifying the whole case, and so until the Supreme Court acted every employer would have the right, if that agreement was entered into, to discharge at will, and this law would be null and void until the Supreme Court acted. I don't think labor should be asked to be a party to that sort of an agreement.

Mr. Weinberg: You understand the law to be constitutional and applicable to a clothing manufacturer. We understand the law to be unconstitutional and invalid and absolutely inapplicable to this particular client and, therefore, we are not interested in what anybody wants, but in what the court has to say as to what we shall ultimately do. 151

Mr. Blumberg: Well, now, I am not discussing the legal end of it. I am taking the law as it is, and on the basis of that law why, these people have certain rights. For that reason I would insist that the hearing proceed and the rights of these people not be jeopardized and compromised in a manner that would leave these people on the streets permanently and definitely. 152

Mr. Weinberg: Mr. Examiner, I did not come here today with the idea of making, and I do not intend to indulge in, any speeches, waving the American flag, or anything else. I came here to meet a legal question, and we are attempting to meet that as lawyers, and in the way we understand the law has provided that American citizens shall meet questions of this kind, whether they be laborers, whether they be foremen, or whether they be owners or employers, or whatnot, and I do not intend to indulge in any forensic display here and either wave the American flag or holler about it, or anything of that sort. 153

Mr. Wirin: May I state the position of the Board as represented by counsel?

Mr. Green: May I add this before you do?

Mr. Wirin: Certainly.

Mr. Green: In response to what Mr. Blumberg said, the fact is, Mr. Blumberg, as counsel for the

National Labor Board will tell you, stipulation or
154 no stipulation, during the trial of this case there is no requirement for us to enter into any sort of agreement such as you suggest. In addition to that, the entering into of such an agreement or stipulation and the waiving of this testimony will only aid everybody in getting the matter disposed of more quickly than the taking of testimony over a long drawn-out period.

Mr. Wirin: May I say, in the first place, although this is wholly collateral, with respect to the waving of the American flag, it seems to me that Mr. Weinberg mentioned the American flag first but,
155 speaking seriously, while Mr. Blumberg presented the position of the Amalgamated, and very properly did so, because the Amalgamated is a party to this proceeding—it is so mentioned in the complaint and it happens to be the organization which is alleged in the complaint to have been discriminated against—the Board also has an interest in the matter of reinstatement, separate from and other than the interest of the Amalgamated, because it happens that Congress in passing this statute placed the responsibility upon the Board of en-
156 forcing it, and of doing everything that could be done, first, through negotiations and voluntarily, and, second, through orders of the Board, to be enforced by the courts, to prevent employers from discriminating against employees because of their labor union activities, or for other reasons mentioned in the Act, and designated as unfair labor practices.

It happens that, after further consideration of the matter, we are in accord with the position of the Amalgamated only in so far as the matter of

reinstatement is concerned. In other words, we feel quite as strongly as does the Amalgamated, 157
although for wholly different reasons, that the statute, having been enacted and having been signed by the President and being on our statute books, is the law of the land, and that neither counsel for the American Liberty League nor counsel for the respondent in this proceeding can nullify it by merely declaring it to be unconstitutional. That, after all, is the prerogative of the court and not of lawyers. Lawyers have enough responsibility outside of that. Until this law is invalidated by the courts the law must and should be enforced, and 158
counsel owe as great an obligation to the enforcement of it as we representing the Government owe.

So it does seem to us that everything which is or which has the appearance of a stipulation can not be entered into by us, particularly in view of the fact that the stipulation which counsel is offering is only a half stipulation, namely, as to certain of the facts, and not as to certain other facts which we consider very material to the case, namely, the facts concerning interstate commerce.

We further find ourselves in a position not to be willing to stipulate with the respondent because the 159
respondent has openly flaunted, and publicly announced its intention to flaunt by resisting the subpoenas of the Board, the orders of the Board. We intend to issue subpoenas, which are to be prepared. We intend to have them served. We expect to get compliance with the orders of the Board. Of course, it will take all the steps necessary to see first that the mandate of the law with respect to discrimination against employees is followed, and that the orders of the Board, including subpoenas and subpoenas duces tecum, are obeyed.

Under those circumstances, and in view of the
160 fact that the stipulation as offered does not cover the whole case, it seems to us that the better thing to do is not to take any more time of the Examiner and of counsel in speeches, but to proceed at once and introduce evidence, and then when the evidence is introduced the Examiner can make his report to the Board, the Board can make its order, and we and counsel for the respondent will take such steps as we separately consider advisable for the interest of our clients, they for their client and we for the Board.

Mr. Van Arkel: May I state for the record that
161 we do not mean by this to foreclose the right of an agreement at all, Mr. Weinberg. I think we will go ahead and offer some evidence now and reserve final decision on the question of whether or not we should reach an agreement until some later time.

Mr. Weinberg: We have made our proffer in the best of faith, and, we repeat, this is no half offer. We are willing to stipulate every possible fact, every possible fact with respect not only to the facts alleged here in the complaint, but with re-
162 spect to the question of interstate commerce, and I so stated that an hour ago to the Examiner.

I hate to take issue with you, Mr. Wirin, but you have not made a correct statement of what my offer was. I don't want any misinterpretation of what I have offered. We have offered to have you draw the stipulation. We have offered to sit by and allow you to put it into the record. We have offered to admit the facts, and meet you at the first possible moment for a frank legal discussion

of that, because your conception of the law and
our conception of the law are utterly at variance, 163
and we can not get anywhere by just arguing about
it between ourselves.

You are not doing us any favor in this matter at all. We are trying our best to save the Government and ourselves time and money, and to get at a solution of what you think is an important matter to you, and what we know is an important matter to us.

Mr. Wirin: In order that the record may be clear, it does seem very clear to us that the stipulation reserves to counsel for the respondent the
right to introduce such evidence as counsel desires 164
at such times as counsel considers proper and, therefore, is not a stipulation at all.

Mr. Weinberg: Not at all, not at all. You asked me whether or not there were any reservations and my answer is that if you will put into the record the following facts yourself we will have nothing further that we want to put in, namely, that the Friedman-Harry Marks Clothing Company is a corporation of the State of Virginia; that its clothing—

Mr. Wirin: May I interrupt? 165

Mr. Weinberg: Yes, sir.

Mr. Wirin: It is quite manifest that we shall be unable to get together on the stipulation.

Mr. Weinberg: How can that be if you don't want me to state the very things you are now claiming?

Mr. Wirin: I assume you have already stated them at least two or three times.

Mr. Weinberg: I thought I had, but I am going to state them once more in order to make it clear.

We admit that the Friedman-Harry Marks Clothing Company is a corporation in the State of Virginia; that it is engaged in the manufacture of men's clothing at its only plant or factory in the state of Richmond, Virginia; that it purchases raw materials for the manufacture of clothing, both in Virginia and outside of Virginia.

Mr. Wirin: What proportion, sir?

Mr. Weinberg: Just a minute.

Mr. Wirin: That is quite important. It is the heart of the case and you know it is the heart of the case.

Mr. Weinberg: I will admit, further, that the major portion of its purchases is purchased outside of the State of Virginia.

Mr. Wirin: Will you admit 95 per cent?

Mr. Weinberg: I am not in a position, as I said before, to admit whether it is 94 per cent or 95 per cent. I am not in a position to admit that at this moment.

Mr. Wirin: Will you admit over 95 per cent?

Mr. Weinberg: I will admit over 75 per cent.

Mr. Wirin: Will you admit it is over 90 per cent?

Mr. Weinberg: I will admit it is over 75 per cent; and that over 75 per cent of the material used in the manufacture of our clothing is purchased outside of the State of Virginia and is shipped into Virginia to us. I will admit over 75 per cent of the clothing we manufacture from those materials is shipped outside of the State of Virginia by being delivered to railroads or steam boats in Richmond, f. o. b. Richmond, and carried by those railroads or steam boats out of the City of Richmond.

Mr. Wirin: We intend to prove that from 90 to 95 per cent— 169

Mr. Weinberg: If there is anything missing that you want I will try to supply it.

Mr. Wirin: Just to conclude this discussion, Mr. Examiner; since we intend to prove over 90 per cent of the raw materials is purchased, and over 90 per cent of the manufactured products is transported in what we will consider interstate commerce, and since you are unwilling to stipulate as to what we intend to prove, manifestly, we are not in agreement and can not stipulate.

Mr. Weinberg: If you will take enough time to give me the opportunity to go up to the factory 170 and ascertain from our books what the actual percentage is, we will stipulate the actual percentage.

Mr. Wirin: We will not accept a stipulation concerning records which we do not have the opportunity of observing. We will not accept a stipulation like that.

Mr. Weinberg: Is that the atttitude of the United States Government and the National Labor Relations Board? If it is, you can do whatever you please.

Mr. Wirin: We shall follow the law.

Wr. Weinberg: You can do whatever you please. 171

Mr. Wirin: We are ready to proceed, Mr. Examiner. I suggest that perhaps the matter ought to go over until 2 o'clock, at which time we will reconvene and put in our evidence.

Trial Examiner Perring: All right. We will take a recess until 2 o'clock.

(Thereupon at 12.10 o'clock p. m. a recess was taken until 2 o'clock p. m.)

AFTER RECESS

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(The hearing was resumed at 2 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Perring: Proceed, gentlemen.

Mr. Van Arkel: Mr. Examiner, we would like to request another recess for the space of perhaps half an hour, and can you join us, Mr. Examiner?

Trial Examiner Perring: All right. We will take a further recess for a half an hour while we go into the chambers.

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(Thereupon a short recess was taken at the conclusion of which the following occurred:)

Mr. Van Arkel: Mr. Examiner, counsel in this case have agreed on the following stipulation to govern the introduction of evidence in this case:

It is hereby agreed between Bennet F. Schauffler, Regional Director of the National Labor Relations Board for the Fifth Region, Leonard Weinberg and Harry J. Green, Attorneys for the respondent, John Hirschberg, Counsel for the Amalgamated Clothing Workers' of America, A. L. Wirin and G.

174 P. Van Arkel, Attorneys for the National Labor Relations Board subject to the approval of the General Counsel of the National Labor Relations Board, that;

1. The complainant shall present its evidence in this case in the form of written statements of its witnesses, which shall stand as uncontradicted evidence in the record; that the respondent voluntarily waives its right to present any countervailing evidence or to subject witnesses to cross exam-

ination, and admits its full opportunity to cross examine witnesses and present evidence; provided, 175
that the respondent does not waive its rights to present any evidence concerning the character of the business conducted by the respondent or by the clothing industry or concerning labor relations in the clothing industry generally, before the National Labor Relations Board and its agents, in the discretion of the National Labor Relations Board;

2. That the complainant does not hereby waive any right to present further testimony before the National Labor Relations Board, and its agents, 176
in the discretion of the National Labor Relations Board, or to proceed in any lawful manner to compel the production of further evidence; provided, that in the event complainant takes steps to compel the production of any testimony concerning the character of the respondent's business and produces such evidence, the respondent may, in its discretion, produce countervailing evidence before the Trial Examiner;

3. That the parties agree to proceed at once to the preparation of a stipulation of facts concerning the character of the business conducted by 177
the respondent and by the clothing industry generally; that the respondent, in the preparation of such a stipulation, agrees to make known to the complainant the findings as to the business of the respondent, in percentage, by A. M. Pullen & Company, Certified Public Accountants, who have examined the record of the respondent for that purpose; and that such stipulation, if agreed upon, shall be introduced as a part of the record before the Trial Examiner in this case.

I would like to have Mr. Weinberg and Mr. Green
178 state that that is satisfactory.

Mr. Weinberg: As I understand it, that is tantamount to the suggestion we made this morning except that it is in that particular language, which we are now agreeing to. And, in furtherance of that I might say to the Examiner that during the recess I asked the firm of A. M. Pullen & Company, Certified Public Accountants, to make a search of our records for the purpose of supplying the data that was discussed here this morning. They have done so and Mr. J. A. Rennie of that firm is present, and would testify that 82.8 per cent of all of the cloth-
179 ing manufactured by the Friedman-Harry Marks Clothing Company is purchased by customers outside of the State of Virginia, and that 99.57 per cent of all the materials which go into the manufacture of all of the clothing manufactured by it comes from beyond the borders of the State of Virginia, and that all of the merchandise, being the 82.8 per cent which is purchased by customers outside of the State of Virginia, is purchased by them and sold to them by us f. o. b. Richmond, Virginia.

180 These figures cover the period from the first of January, 1935 to the first of November, 1935.

Mr. Van Arkel: I would like to get for the record Mr. Hirschberg's assent to that agreement.

Mr. Hirschberg: Yes.

Mr. Van Arkel: I believe we have your assent, Mr. Weinberg.

Mr. Weinberg: To what?

Mr. Van Arkel: To the proposed agreement.

Mr. Weinberg: Yes. I understand that agreement to be what I proposed this morning, except

that it is in the language in which it now appears, and which I confirm and agree to. 181

Mr. Van Arkel: That arrangement is satisfactory to us. As I understand the procedure now, the testimony which we have to offer will be delivered to the court stenographer for incorporation in the record.

Mr. Weinberg: In narrative form.

Mr. Van Arkel: It is not going to be question and answer form. The parties will proceed—

Mr. Weinberg: And a copy will be served on us, of course?

Mr. Van Arkel: We will have copies for you. 182

Trial Examiner Perring: I think you may have copies.

Mr. Weinberg: Then, of course, you will give us ample time to send to you any objections, as agreed to in there, that we have to the materiality and relevancy of it after we have read it.

Trial Examiner Perring: That is correct.

Mr. Van Arkel: That is satisfactory. The parties will proceed, then, to prepare a stipulation on the interstate commerce phase of the case.

Trial Examiner Perring: Do you suggest an adjournment at this time? 183

Mr. Weinberg: Sine die.

Mr. Van Arkel: Yes.

Mr. Hirschberg: Subject to the approval of the General Counsel.

Mr. Wirin: Adjourn it for one week.

Mr. Hirschberg: Tuesday morning.

Trial Examiner Perring: We can not adjourn this hearing sine die.

Mr. Green: You can?

Trial Examiner Perring: We can not.

Mr. Green: What steps do you suggest we take?

184 Mr. Wirin: Suppose we adjourn until next Tuesday. By that time we will have conferred with General Counsel and have gotten his approval, and we may take a further adjournment, depending upon further negotiations, if necessary.

Mr. Hirschberg: Will it be necessary for us to be present?

Mr. Weinberg: No. It is just with the understanding that we will try to meet one another's convenience within reason, subject to other court engagements.

185 Mr. Wirin: Mr. Blumberg suggests adjourning it to Washington.

Mr. Weinberg: That is quite agreeable to me.

Mr. Wirin: We will undertake in Washington to see if General Counsel is going to agree to the procedure. We can meet in Washington.

Mr. Weinberg: Certainly, we can do that.

Mr. Wirin: If General Counsel decrees the hearing will go on here Tuesday morning.

Mr. Weinberg: That is right.

Trial Examiner Perring: Yes. Could we adjourn to the offices of the National Labor Rela-

186 tions Board or will some other place be provided?

Mr. Van Arkel: I think we can find a place in the offices of the National Labor Relations Board.

Trial Examiner Perring: Suppose we leave it there. We will adjourn until 10 o'clock next Tuesday morning at the offices of the National Labor Relations Board in Washington, D. C.

(Whereupon, at 4:00 o'clock p. m., November 6, 1935, the hearing in the above-entitled matter was adjourned to Washington, D. C., 10 o'clock a. m., Tuesday, November 12, 1935.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD 187

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA 188	Case No. V-C-1

Room 507, Denrike Building,
National Labor Relations Board,
Washington, D. C.,

Tuesday, November 12, 1935.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:22 o'clock a. m.

Before: 189

HENRY G. PERRING,
Trial Examiner.

Appearances:

GERHARD P. VAN ARKEL, Regional Attorney, and A. L. WIRIN, Attorney, on behalf of the National Labor Relations Board.

PROCEEDINGS

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Trial Examiner Perring: You may proceed, gentlemen.

Mr. Wirin: For the purposes of the record let the record show that since the hearing heretofore scheduled and held at Richmond, Virginia, a stipulation has been entered into by the Regional Director of the National Labor Relations Board, Bennet F. Schauffler, and the National Labor Relations Board, through its counsel, and the Friedman-Harry Marks Clothing Company, Incorporated, respondent, by its counsel, under

191 date of November 8, 1935, which stipulation is to be substituted for and is in lieu of the agreement and stipulation heretofore read into the record on the 6th day of November, 1935, at Richmond, Virginia.

I now offer into the record the stipulation entered into by counsel and ask that it be marked as Exhibit No. 3.

Trial Examiner Perring: It will be received as the Board's Exhibit No. 3.

192 (The stipulation referred to was received in evidence and marked "Board's Exhibit No. 3.")

Mr. Wirin: Counsel for the complainant requests a continuance of 10 days on this matter, to November 22, 1935, at 10 o'clock, at the office of the National Labor Relations Board, Washington, D. C., in order to give counsel for the complainant an opportunity to prepare the affidavits and stipulation referred to in the stipulation marked Exhibit No. 3.

Let me further state that I have just spoken to Mr. Weinberg, counsel for the respondent, over 193
the telephone, who stated that while he is not willing to enter into a stipulation for a continuance, he has no objection thereto.

Trial Examiner Perring: Gentlemen, is my understanding correct that under the terms of the stipulation whatever evidence is to be introduced, by way of affidavit or otherwise, is to be submitted to me as Examiner, and that I am to make an intermediate report to the Board, as is provided by the rules and regulations?

Mr. Wirin: The stipulation expressly provides for that, and I am sure that is the clear and gen- 194
eral understanding all around.

Trial Examiner Perring: Very well. The continuance is granted.

(Whereupon, at 10:32 o'clock a. m., November 12, 1935, the hearing in the above-entitled matter was adjourned to Washington, D. C., 10 o'clock a. m., Friday, November 22, 1935.)

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BEFORE THE NATIONAL LABOR
196 RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, a Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA 197	Case No. V-C-1

Hearing Room, Fourth Floor,
State Office Building,
Richmond, Virginia,

Thursday, December 5, 1935.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 1.15 o'clock p. m.

198 Before:

HENRY G. PERRING, Trial Examiner.

Appearances:

GERHARD P. VAN ARKEL, Regional Attorney, and
A. L. WIRIN, Attorney, on behalf of the National Labor Relations Board.

JOHN HIRSCHBERG, 220 Broad Grace Arcade, Richmond, Virginia, on behalf of Amalgamated Clothing Workers of America. 199

H. BLUMBERG, 15 Union Square, New York, N. Y., on behalf of Amalgamated Clothing Workers of America.

LEONARD WEINBERG and

HARRY J. GREEN, of Weinberg and Sweeten, 33rd Floor, Baltimore Trust Building, Baltimore, Maryland, on behalf of Friedman-Harry Marks Clothing Company, Inc.

PROCEEDINGS. 200

Trial Examiner Perring: Are you ready, gentlemen?

Mr. Weinberg: May we just have one minute to look over these affidavits?

Trial Examiner Perring: Yes, sir.

Mr. Weinberg: The other side has no copies for us.

Trial Examiner Perring: Very well.

(After a pause:)

Mr. Wirin: I think we are both ready, Mr. Examiner. 201

Trial Examiner Perring: Are you ready, Mr. Weinberg?

Mr. Weinberg: Yes, sir.

Trial Examiner Perring: The case we have before the National Labor Relations Board, Fifth Region, is in the Matter of Friedman-Harry Marks Clothing Company, Inc., a Corporation and Amalgamated Clothing Workers of America, being Case No. V-C-1.

Mr. Wirin: In this matter, since the last session in this room before the Examiner, counsel for

the Board and counsel for the Friedman-Harry
202 Marks Clothing Company, Inc., Respondent, have entered into a stipulation concerning the manner of introduction of testimony.

I believe that on one occasion at Washington at a hearing before the Examiner, in the absence of Mr. Weinberg, there was offered in evidence a copy of the stipulation. At this time, with the consent of counsel for the respondent, we offer in evidence the original stipulation and ask that the copy may be withdrawn, and the understanding, further, is that the stipulation shall be copied into and become a
203 part of the record rather than remaining as an exhibit. Is that correct, Mr. Weinberg?

Mr. Weinberg: Yes, sir. May I say this, Mr. Examiner, that on the 6th of November, when we were here, and this case was first called for trial before you, we stated at the very outset that it was entirely a question of law, as we understood it, that we intended to obtain an immediate decision on our rights and of the constitutionality of the National Labor Relations Act, and that we would do everything in our power to expedite the hearing and the determination of this case, and we meant exactly
204 what we said. To that end we offered to permit the complainant to submit its testimony by affidavit, and we agreed to offer no testimony on our own behalf as to our alleged violations of the Act.

We now formally waive our right to cross examine all the witnesses, as well as our right to produce any contradictory or countervailing evidence.

We will only reserve our legal objections to this testimony in the form of affidavits, which would apply equally whether or not the witnesses were present and testified.

Merely for the purposes of this record, and not to be understood as in any sense being critical of

counsel for the National Labor Relations Board, we want it thoroughly understood that since the 205
adjournment on November 6th we have been making every effort to have this matter presented to the Examiner and to the Board. Each of the successive postponements has been at the request solely of the complainant, and it was not until day before yesterday that we received the voluminous affidavits which are about to be filed.

In view, therefore, of our attitude and of our proposals and of the bringing of a second complaint before the first has been heard and disposed of, and of the action of the complainant in disclosing to the 206
press the affidavits of the witnesses before they were offered before this tribunal, we respectfully ask, and we believe we have the right to demand now, that the Trial Examiner and the National Labor Relations Board decide this case immediately, without delay, so that we can secure an immediate review of it by the courts.

Mr. Wirin: May I state that in so far as securing a speedy determination of this matter is concerned, counsel for the Board joins in that request. There is no intention on our part to have this matter postponed, so far as any decision is concerned. Now, 207
in order that the matter may be clear, Mr. Weinberg, I understand that such objections as you will make concerning certain affidavits and documents which we will offer, all of which you have seen, will be not to the form of the testimony namely, that the testimony is in the form of affidavits, but merely as to the competency, materiality and relevancy of the subject matter of the affidavits and documents offered in evidence.

Mr. Weinberg: That is absolutely correct.

Trial Examiner Perring: Those things will be

handled as they come up. The only matter definitely
208 before us right now is the question of the substitution of a different stipulation than was originally agreed on at the hearing held here, last month.

Mr. Wirin: Yes. Perhaps, unless you have objection, Mr. Weinberg, in order to keep this rather large number of affidavits separate, we will have each one marked for identification first so that we will all know what we are talking about, and then we will offer them in evidence to be copied into the record as evidence in this case. Is that satisfactory with you?

Mr. Weinberg: Yes. Again, this is no criticism
209 of you, but we do not have copies of those affidavits. I assume you are going to offer them in the form in which you showed them to me last night.

Mr. Wirin: Exactly.

Mr. Weinberg: And that they will appear in the record, really, as the testimony of the witnesses, one affidavit following the other, with our respective objections to them.

Mr. Wirin: That is correct.

At this point, by stipulation of counsel, without actually reading into the record complainant's Ex-
210 hibit No. 4 for identification, the exhibit is offered into the record to become part of the record.

Trial Examiner Perring: This is the original?

Mr. Wirin: Yes, sir.

Trial Examiner Perring: You have no objection to it, Mr. Weinberg?

Mr. Weinberg: No, sir. I signed that in Washington with Mr. Wirin some time ago.

Trial Examiner Perring: All right. It will be received, and may be copied into the record.

(The paper referred to was received in evidence and marked, "Board's Exhi-

UNITED STATES OF AMERICA

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

212

STIPULATION

The following stipulation and agreement is hereby entered into in the above entitled proceeding concerning the introduction of evidence therein in response to the request made by respondent's counsel at the duly scheduled hearing on November 6, 1935, at 10:00 A. M. in the hearing room, State Office Building, Richmond, Virginia, without a request by counsel for the respondent for a continuance of said hearing. It is agreed as follows:

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1. The complainant shall present its evidence in the above entitled case as to the unfair labor practices complained of in the form of written and sworn statements of its witnesses, which shall stand as uncontradicted evidence in the record, the respondent admitting its full opportunity to cross-

examine such witnesses and to present evidence as
214 to these matters; the complainant shall have the right to produce such evidence as it considers material and relevant, respondent reserving the right to object thereto on the ground of incompetency, immateriality and irrelevancy.

2. That the complainant and respondent agree to proceed at once to the preparation of an agreed statement of facts concerning the character of the respondent's business and shall endeavor to arrive at such an agreement within five days of the date thereof; the complainant reserves the right to pre-
215 sent evidence on any matters concerning the character of the respondent's business not covered by such stipulation in the form of written statements of its witnesses which shall stand as uncontradicted evidence in the record unless objected to by the respondent. If such objection be made, and if the respondent desires to produce countervailing evidence as to any of these matters, the complainant shall offer such witnesses to the respondent for cross-examination and the respondent shall submit its witnesses before the Trial Examiner for oral
216 examination by it and cross-examination by the complainant. The complainant does not hereby waive any right to present further testimony before the National Labor Relations Board and its agents in the discretion of the National Labor Relations Board, or to proceed in any lawful manner to compel the production of further evidence; provided always, that any such evidence shall be produced subject to the right of the respondent to cross-examine witnesses or to present countervailing oral testimony before the Trial Examiner as above provided.

3. That the complainant shall present its evidence as to the character of the clothing industry 217
generally, and as to labor relations in the clothing industry generally and the results thereof, and such other evidence as the complainant may desire, in the form of written and sworn statements of the witnesses, which shall stand as uncontradicted evidence in the record, unless the respondent objects thereto or desires to produce countervailing testimony. If the respondent shall so object or desire to produce further testimony, the complainant shall offer its witnesses to the respondent for oral cross-examination, and the respondent shall present its witnesses for oral examination and cross- 218
examination by the complainant before the Trial Examiner.

4. That if the respondent shall produce witnesses as provided in paragraphs 2 and 3, the complainant shall have the right to offer rebuttal witnesses for oral examination and cross-examination by the respondent before the Trial Examiner.

5. That all of the testimony, written or oral, mentioned above shall be presented before the Trial
Examiner at such time and place as he may desig- 219
nate. Such evidence shall constitute part of the record in the above case and the Examiner shall make his report thereon to the National Labor Relations Board, in accordance with the rules and regulations of said Board.

Dated this Eighth day of November, 1935.

(Signed) BENNET F. SCHAUFFLER
Bennet F. Schauffler, Regional Director National Labor Relations Board

(Signed) G. P. VAN ARKEL and A. L. WIRIN,
220 G. P. Van Arkel and A. L. Wirin,
Counsel for the National Labor
Relations Board.

(Signed) WEINBERG & SWEETEN
By Leonard N. Weinberg
Leonard Weinberg and Harry J.
Green, counsel for Friedman-Harry
Marks Clothing Company, Inc.,
Respondent.

Mr. Wirin: I will have this marked
221 Board's Exhibit No. 5 for identification.
That is a document headed, "Information
submitted by counsel for Friedman-Harry
Marks Clothing Company in response to in-
quiry by the National Labor Relations Board
under date of November 27, 1935."

Mr. Weinberg: That will be Exhibit No.
5?

Mr. Wirin: That will be Exhibit No. 5
for identification. At this point it is stipu-
lated that Exhibit No. 5 for identification
may be copied and become a part of the rec-
222 ord in this proceeding.

Mr. Green: At this point, and before
those questions and answers are offered into
the record, we object to the testimony and
the information, in whole and in part, on
the ground that it is irrelevant, immaterial
and incompetent, and our objection goes to
both the questions and the answers, and we
also object on the ground that it contains in-
formation of no probative force or value;

and that it is generally improper and inadmissible. 223

We ask that this objection be noted in the record, and if there be no immediate ruling upon our objection here today we also ask that our exception be noted to the ruling of the Trial Examiner and/or the National Labor Relation Board.

Mr. Wirin: I suggest that the Examiner rule on that matter at this time as we go along.

Trial Examiner Perring: I will rule on that. We will admit the evidence and note your exception. It may be copied into the record. 224

(The paper referred to was marked for identification, "Board's Exhibit No. 5.")

(Board's Exhibit No. 5 is as follows:)

INFORMATION SUBMITTED BY COUNSEL FOR FRIEDMAN-HARRY MARKS CLOTHING COMPANY IN RESPONSE TO INQUIRY BY THE NATIONAL LABOR RELATIONS BOARD UNDER DATE OF NOVEMBER 27, 1935. 225

A. M. Pullen & Company, certified public accountants, after an examination of the books and records of the Friedman-Harry Marks Clothing Company, made at the request of the Respondent, stated that 82.8% of all the clothing manufactured by the Friedman-Harry Marks Clothing Company is pur-

chased by customers located outside of the State of
226 Virginia, and that 99.57% of all the materials which go into the manufacture of all of the clothing fabricated by the Friedman-Harry Marks Clothing Company comes from beyond the borders of the State of Virginia and that all of the merchandise which is purchased by customers outside of the State of Virginia is purchased by them and sold to them F. O. B. Richmond, Virginia.

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1. Q. The sources of materials used by the com-
227 pany in manufacturing clothes. (a) Please list materials used in the manufacture of garments as, for example, woolen or worsted cloth, cotton, rayon, silk or other linings, canvas, thread and other sewing materials, buttons, shoulder pads.

A. The materials used in the manufacture of garments by the Friedman-Harry Marks Clothing Company are:

Woolen and worsted cloth, cotton, rayon, silk and other linings, canvas, thread and other sewing materials, buttons, shoulder pads, Hymo, felt,
228 under-collar cloth, silesia, wigan and cotton tape.

2. Q. Please list other materials used in the process manufacture as, for example, needles, oil, boxes and cartons.

A. Other materials used in the process of manufacture are: needles, oil, boxes, cartons, hangers, sewing machines, pressing machines, various types of special machinery, such as buttonhole, lining-felling and seam-binding machinery, coal, gas, electricity, water, marking materials, such as chalk,

twine, nails, wrapping paper, stationery, cardboard, pattern paper, shears, knives, cutting machines, 229
pens, pencils, ink, size tickets, typewriters, order books, ledger books, electric light bulbs, desks, shelving, adding and calculating machines, piece work tickets, grease, automobiles, hand trucks and trunks.

3. Q. What percentage of woolen or worsted goods come from states other than Virginia? Are any of these goods used by the firm according to specifications laid down by the company?

A. 99.57% of the woolen or worsted goods come from states other than Virginia. None of these 230
goods is made according to specifications laid down by the Company. It buys open line goods.

4. Q. In what states are the selling offices of the woolen and worsted manufacturers from which the firm of Friedman-Harry Marks buys woolen and/or worsted cloth during the past year, located?

A. The selling offices of the woolen and/or worsted manufacturers from which the Friedman-Harry Marks Clothing Company bought during the past year are located in New York. 75% of all the 231
woolen or worsted cloth used by the Company is purchased in New York and 25% at the headquarters of the Company in Richmond, but the Hymo comes from the State of Pennsylvania. The felt and the under-collar cloth used by the Company are purchased in Richmond, but come from New York. The silesia and wigan are purchased in Richmond, but come from South Carolina. The cotton tape is purchased in Richmond, but comes from Philadelphia, Pa.

5. Q. In what states are the factories from which
232 woolen and/or worsted goods are secured, located, for the past year?

A. The factories from which woolen and/or worsted goods were secured during the past year are located in Virginia, South Carolina, Massachusetts, Connecticut, New York, Pennsylvania, Indiana, Ohio, Illinois, New Jersey, Rhode Island and Maine.

6. Q. Please list the states from which woolen or worsted cloth comes in order, in terms of per-
233 centages used by the company indicating the percentage opposite each state, viz: in the event 50% of the woolen and worsted cloth comes from Massachusetts and this percentage of cloth used by the company is the largest percentage, then Massachusetts would come first and other states next in order.

A. The following is a list of the states in which woolen or worsted cloth was fabricated from which Friedman-Harry Marks Clothing Company received woolens and/or worsteds during the past year, listed in order, with the percentages of each:

234 Massachusetts 50%, Connecticut 10%, New York 8%, Rhode Island 8%, New Jersey 5%, Pennsylvania 4%, South Carolina 3%, Illinois, Indiana, Ohio and Maine 12%, Virginia .43%.

7. Q. With respect to the following fabrics or materials:

a) Cotton, rayon, silk or other linings

b) Canvas

c) Thread and other sewing materials

d) Buttons

e) Shoulder pads

f) Boxes and cartons

g) Oil

h) Needles

and as to each of them, please give the information asked for in Points 3, 4, 5, and 6.

A. The following fabrics or materials purchased during the year by Friedman-Harry Marks Clothing Company were manufactured in the following states:

(a) Cotton, rayon, silk or other linings; all of the rayons, amounting to 50% of all the lining used, come from New York; cotton linings, amounting to 50% of all the linings used, come from South Carolina, Georgia and North Carolina, 40% of which come from each of the states of Georgia and South Carolina and 20% of which come from North Carolina; 95% of the purchases of cotton linings are made in New York City and 5% in Baltimore, Maryland.

(b) All of the canvas comes from Pennsylvania, The selling companies maintain their offices in Pennsylvania.

(c) All of the thread and other sewing ma-
238 terials come from New York. All of the selling companies maintain offices in New York.

(d) All of the buttons come from New York. All of the selling companies maintain offices in New York.

(e) All of the shoulder pads come from Maryland. All of the selling companies maintain offices in Maryland.

(f) All of the boxes and cartons come from Vir-
239 ginia.

(g) All of the oil comes from Virginia.

(h) All of the needles come from Maryland. All of the selling companies maintain offices in New York.

In response to an additional inquiry, there is listed below the various items enumerated in the answer to question No. 2, along with the place of purchase and where the article comes from.

240 Hangers—they are purchased in Richmond and come from Richmond.

Sewing machines—75% of them are purchased in Baltimore and come from Baltimore. The balance are purchased in New York and come from New York.

Pressing Machines—they are purchased in New York and come from New York.

Buttonhole machinery—this is purchased in Baltimore and comes from Massachusetts.

Lining felling machinery—this is purchased in Baltimore, and comes from Illinois. 241

Seam-binding machinery—this is purchased in Baltimore and comes from Illinois.

Coal—this is purchased in Richmond and is delivered from Richmond.

Gas—this is purchased in Richmond and comes from Richmond.

Electricity—this is purchased in Richmond and comes from Richmond.

Water—this is purchased in Richmond and comes from Richmond.

Chalk—this is purchased in New York and comes 242
from New York.

Twine—this is purchased in Richmond and comes from Richmond.

Nails—they are purchased in Richmond and delivered from Richmond.

Wrapping paper—this is purchased in Richmond and comes from Richmond.

Stationery—this is purchased in Richmond and comes from Richmond.

Cardboard—this is purchased in Richmond and comes from Richmond.

Pattern paper—this is purchased in New York 243
and comes from New York.

Shears—these are purchased in Newark and come from Newark, N. J.

Cutting machines—these are purchased in New York; 50% of them come from Ohio, 25% from New York, and 25% from Pennsylvania.

Pens—these are purchased in Richmond and come from Richmond.

Pencils—these are purchased in Richmond and come from Richmond.

Ink—this is purchased in Richmond and comes
244 from Richmond.

Size tickets—these are purchased in Philadelphia, Pa. and come from Philadelphia, Pa.

Typewriters—these are purchased in Richmond and are delivered from Richmond.

Books—these are purchased in Richmond and come from Richmond.

Electric light bulbs—these are purchased in Richmond and come from Richmond.

Order books—these are purchased in Richmond and come from Richmond.

245 Ledgers—these are purchased in Richmond and come from Richmond.

Desks—these are purchased in Richmond and delivered from Richmond.

Shelving—this is purchased in Richmond and comes from Richmond.

Adding and calculating machines—these are purchased in Richmond and come from Richmond.

Piece work tickets—these are purchased in Richmond and come from Massachusetts.

Grease—these are purchased in Richmond and come from Richmond.

246 Automobiles—these are purchased in Richmond and delivered from Richmond.

Hand trucks—these are purchased in Richmond and come from Richmond.

Trunks—these are purchased in Richmond and come from Richmond.

8. Q. At what point does title to woolen cloth and other materials listed above pass to the company?

A. Title to the woolen cloth and all other materials listed above passes to the Company at the point of shipment. 247

9. Q. Where does the company have woolen cloth sent immediately after it acquires title; what method or methods of transportation is used?

A. Immediately after the company acquires title to the woolen cloth it is sent to a sponger in New York City by truck and rail.

10. Q. Does the firm of Friedman, Harry Marks examine the fabrics it has purchased before shrinking or sponging? If such examination is made, where is it made? 248

A. The Friedman-Harry Marks Clothing Company does not examine the fabrics it has purchased before shrinking or sponging.

11. Q. Are woolen cloth, canvasses, etc. purchased by the firm, sponged or shrunk outside the State of Virginia? If so, list the cities where such sponging and shrinking has been done during the past year.

A. All sponging done for the Company during the past year was done in the City of New York. 249

12. Q. Does the company shrink or sponge any of its materials in Virginia? If so, what percentage?

A. The Company does not shrink or sponge any of its materials in Virginia.

13. Q. Does the company own the sponging or shrinking plants used in other states for the sponging and shrinking of its fabrics?

A. The Company does not own any sponging or
250 shrinking plants.

14. Q. How are the goods transported from the places where they are shrunk or sponged to the manufacturing department in Richmond?

A. The goods are transported from the places where they are shrunk or sponged to the plant in Richmond, Virginia, by truck or rail.

15. Q. Has the firm of Friedman, Harry Marks had any work made up by contractors outside the state of Virginia, within the past two years, if so,
251 where? If so, were such garments shipped to the New York Office or shipped to the Richmond plant?

A. The Friedman-Harry Marks Clothing Company has not had any work made up by contractors within the past two years, inside or outside of the State of Virginia.

16. Q. Has the firm of Friedman, Harry Marks made up work for any other clothing manufacturer located outside of the State of Virginia, during the past two years? If so, where were other firms
252 located?

A. The Friedman-Harry Marks Clothing Company has not made up work for any other clothing manufacturer during the past two years, selling only for retail resale, either inside or outside the State of Virginia.

In answer to a special inquiry made in this connection, the Friedman-Harry Marks Clothing Company sells to retailers who may or may not, in addition, make up clothes on special order or otherwise for their customers.

17. Q. Are materials used in the production of the garments manufactured in the Richmond plant purchased through the New York Office, or through the Richmond plant? Are records of such purchases kept in New York, or Richmond? Are payments for such materials made by the New York office or through Richmond? 253

A. The materials used in the production of the garments manufactured at the plant are purchased both from the office in Richmond and at times through the New York office. The originals of all orders are kept in Richmond. Duplicates of some orders are sent to the New York office. All payments for all purchases are made from Richmond. 254

18. Q. Does the New York Office arrange for the delivery of materials purchased and for the examination, shrinking, and sponging of such materials?

A. The New York office does not arrange for the delivery of materials purchased or for the shrinking and sponging of such materials. The materials are not examined before shrinking and sponging.

255

19. Q. Are all materials purchased kept in stock at Richmond, or are any stored in New York?

A. All materials purchased are kept in stock at Richmond. None are stored in New York.

20. Q. Are purchases of thread, needles, machine oil made by the New York office or records of such purchases kept in New York or payments made for such articles through the New York office?

256 A. Purchases of thread, needles and machine oil are made in Richmond. Occasionally, some purchases may be made through the New York office. All payments for all purchases, however, are made from Richmond, and all records are kept there. Occasionally a duplicate of an order may be sent to the New York office from Richmond.

21. Q. Are new machines purchased by plant officials in Richmond, or by the New York Office?

A. New machines are purchased by plant officials of the Friedman-Harry Marks Clothing Com-
257 pany in Richmond.

22. Q. Does the New York office forward money to Richmond for payrolls? If money is not forwarded for the entire payroll, are any officers of the Company, or plant officials, paid directly from New York?

A. The New York office does not forward money to Richmond for payrolls. No officers of the Company or plant officials are paid directly from New York.

258 23. Q. Are copies of payroll records forwarded from the Richmond plant to the New York Office? Are sums due workers for work performed either on an hourly basis, or a piece-work basis, computed in New York from records forwarded by the Richmond plant? Are such payroll records audited and inspected in New York, if not computed there? A. No copies of payroll records are forwarded from Richmond plant? Are such payroll records audited workers are computed in New York from records forwarded by the Richmond plant. No payroll

records are audited and inspected in New York. The entire payroll computation and payment are made exclusively in Richmond. 259

24. Q. Have any errors been noted on these payroll reports at any time, and the attention of the plant officials in Richmond called to such errors?

A. The attention of the plant officials in Richmond has not been called to any errors in payroll reports by the New York office.

25. Q. Are salaries for officers of the Company, or plant officials stationed in Richmond determined in New York, or in Richmond? Are hourly rates of pay and piece-work rates determined in Richmond or New York? If such rates are determined in Richmond, is a copy of the rates forwarded to the New York office for filing or approval? 260

A. The salaries of officers and plant officials of the Company stationed in Richmond are determined in Richmond. Hourly rates of pay and piece-work rates are determined in Richmond. No copy of the rates is forwarded to the New York office for either filing or approval.

261

26. Q. Are proposed changes in piece-work rates submitted to an officer of the firm located in New York for approval?

A. Proposed changes in piece work rates are all considered and determined in Richmond. They are not submitted to an officer of the Company located in New York for approval. However, at times, officials who are generally at the New York office are in Richmond at the time piece rate changes are considered and take part in the consideration and determination of the rates. After a piece rate

has been established, officials at the New York
262 office may, at times, be notified, but this is not invariably the rule.

27. Q. Are cutting schedules made up in New York and forwarded to the Richmond plant for its guidance in making up work?

A. Cutting schedules are not made up in New York and forwarded to the plant. All cutting schedules are made in Richmond.

28. Q. Are orders shipped from Richmond in accordance with instructions received from New
263 York Office?

A. Orders are not shipped from Richmond in accordance with instructions received from the New York office. All shipments are made in accordance with instructions from Richmond. When the order is taken by a salesman, whether in New York, Chicago, or any other city, the order may or may not contain such shipping instructions as the purchaser desires to give. All of these orders are sent to Richmond. Those which contain shipping instructions are complied with at the plant. With
264 respect to those which do not contain shipping instructions, if there are any such, the methods and manner of shipment are determined by the officials at the plant. The choice of shipping facilities, such as which railroad or which bus line, in the absence of specific instructions from the purchaser, is made in Richmond and no place else.

29. Q. Are customers' labels sewed on to the garments in accordance with instructions from New York Office?

A. Customers labels are not sewed on to the garments in accordance with instructions from the New York office. 265

30. Q. Do officers of the Company usually stationed in New York make frequent or occasional trips to Richmond to investigate and supervise the management of the plant there?

A. Officers of the Company usually stationed in New York do make frequent trips to Richmond to take part in the operation and conduct of the general business.

31. Q. Are accountants or price experts sent from the New York office to Richmond to inspect accounts, or advise on production problems? Does the N. Y. Office have a direct wire to the Richmond plant? 266

A. Neither accountants nor price experts are sent from the New York office to Richmond to inspect accounts or advise on production problems. The New York office does not have a direct wire to the Richmond plant.

32. Q. Is a complete set of records of the business of the company kept at the New York Office? If not, in what respects is it incomplete? 267

A. No complete set of records of the business of the Company is kept at the New York office. As a matter of fact, whatever records are sent to New York are solely for the purposes of information as to specific matters and are entirely incomplete. The only records sent to New York are duplicates of orders and invoices. Duplicates of most orders are forwarded to the New York office

for its information, but no record is kept. Dupli-
268 cates of invoices are sometimes sent to New York in order that the New York office might check up to ascertain whether deliveries are being made to the Company, as promised.

33. Q. Please name the salesmen in the employ of the company.

A. There are eight persons who from time to time take part in selling the clothing manufactured by the Company. Two of these are full-time salesmen. The other six from time to time perform
269 additional duties. Five of these persons who take part in selling are officers and members of the Board of Directors of the Company, and one of them is merely a member of the Board of Directors.

34. Q. Describe the routes which these salesmen have covered in the past year if they have traveled outside the state of Virginia, naming the states covered.

A. The states covered by the salesmen in the past year are: Texas, Tennessee, Indiana, Kentucky, Virginia, Alabama, Georgia, Maryland, District of
270 Columbia, North Carolina, South Carolina, Florida, Ohio, Illinois, Missouri, Michigan, Louisiana, Massachusetts, Rhode Island, Connecticut, New York and Pennsylvania.

35. Q. Do these salesmen make reports to the New York office, or to the Richmond plant, or to both?

A. Salesmen make reports only to the Richmond office. Sometimes, as hereinabove stated, reports

of orders are sent from Richmond to the New York office, for the information of officials who may be there. 271

36. Q. Name the states in which the salesmen have made sales during the past year.

A. The states in which salesmen have made sales during the past year are: Texas, Tennessee, Indiana, Kentucky, Virginia, Alabama, Georgia, Maryland, District of Columbia, North Carolina, South Carolina, Florida, Ohio, Illinois, Missouri, Michigan, Louisiana, Massachusetts, Rhode Island, Connecticut, New York and Pennsylvania. 272

36 (a) With respect to question No. 50, the order and approximate percentages of said states are as follows:

Virginia 17.8%; Texas 10%; North Carolina 10%; New York 7%; Illinois 7%; Tennessee 5%; Louisiana 5%. The remainder is split up in small proportions among the following states: Indiana, Kentucky, Alabama, Georgia, Maryland, District of Columbia, South Carolina, Florida, Ohio, Missouri, Michigan, Massachusetts, Rhode Island, Connecticut and Pennsylvania. 273

37. Q. Is any of the product of the company disposed of to consumers directly through house to house canvassing in states other than Virginia?

A. None of the products of the Company are disposed of to consumers directly through house to house canvassing, either in Virginia or anywhere else.

38. Q. What proportion of the total sales of the company are made in the New York salesroom?

A. From 15% to 20% of the total sales of the
274 Company are made through the New York office.

39. Q. Please describe how the manufactured clothes are shipped, whether by Parcel Post, Railway Express, railroads or water transportation, giving the proportion of each transportation facility used.

A. The manufactured clothes are shipped as the customer orders. Approximately 65% are shipped by railroad freight, 15% by railway express, 10% by truck, and 5% each by water and by Parcel Post.

275 40. Q. List magazines or periodicals in which the firm has advertised its product during the past two years.

A. The Company has not advertised its products during the past two years in any magazine or newspaper. It does have a listing in the Fairchild Directory and the American Clothier Directory.

41. Q. Has the firm contributed to the cost of the advertisement of its product by retailers in localities outside the state of Virginia? If so, list the states and amount spent for advertising outside of
276 State of Virginia.

A. The Company has not contributed to the cost of the advertisement of its product by retailers in localities outside the State of Virginia.

42. Q. List all the registered trademarks, or tradenames under which the firm sells its product, together with the date of the registration of such trademark or tradename.

A. The Company registered a trade name "Rockingham", in 1927 or 1929.

43. Q. Please state the proportion of monies spent on advertising outside the State of Virginia, including proportion of monies spent in advertising where circulation of advertisement was outside of the State of Virginia in part, if not entirely. 277

A. The Company does not advertise, except the two listings or advertisements in the directories above referred to.

44. Q. Please state what returns of merchandise by retailers outside of Virginia have taken place during the last year, indicating what alterations or repairs were made and what re-shipment including the methods of transportation used in such re-shipment. 278

A. During the last year there were no returns for alterations or repairs.

45. Q. Please state whether or not the company has a designer in New York, whether or not the company has any employees in New York who make up samples for designing and whether or not the company employs any sample pressers in New York.

A. The Company does not have a designer in New York. The Company does not have any employees in New York who make up samples for designing. The Company does not employ any sample pressers in New York. 279

46. Q. Please give the names and residences of the officers of the company and the same information concerning the Board of Directors of the Company.

A. The names of the officers of the Company and
280 their residences are:

Morton Marks, President, Richmond, Virginia.
W. L. Bailey, Vice-President, Richmond, Virginia.
Samuel Greenberg, Vice-President, Richmond, Va.
Keeve Marks, Secretary, Richmond, Virginia.
Edward Friedman, Treasurer, New York.

Board of Directors

281 Louis M. Friedman, Chairman, New York.
Morton Marks, Richmond, Virginia.
W. L. Bailey, Richmond, Virginia.
Samuel Greenberg, Richmond, Virginia.
Keeve Marks, Richmond, Virginia.
Edward Friedman, New York.
Daniel Friedman, New York.

47. Q. Please state whether or not it is substantially true that "in the Spring of 1931, the Friedman interests invested $50,000 of cash capital in the enterprise (referring to the Friedman-Harry
282 Marks Co.). This was in furtherance of a plan to merge the business with that previously conducted in New York City by Friedman Bros. Co."

A. It is not substantially true that in the Spring of 1931 the Friedman interests invested $50,000 of cash capital in the Company in furtherance of a plan to merge the business with that previously conducted in New York City by Friedman Bros. Company. The fact is that Mr. Louis M. Friedman, who had been one of the partners in Friedman Bros.,

which completely liquidated in 1930, did, in 1931, make an investment in the Friedman-Harry Marks 283
Clothing Company. He is the only one of the members of the former firm of Friedman Bros. who did invest in the Friedman-Harry Marks Clothing Company. Mr. Edward Friedman, Jr., a son of Louis Friedman, who had had no interest in the firm of Friedman Bros., also, in 1931, made an investment in the Friedman-Harry Marks Clothing Company. The other two partners of Friedman Bros. have never been connected with the Friedman-Harry Marks Clothing Company nor was there ever any merger, consolidation or other connection be- 284
tween the former Friedman Bros. Company and the present Company.

48. Q. Please state whether or not it is substantially true that the "sales in the north and west are handled by the New York City Offices. Patronage is derived mainly from department stores and men's clothing stores in larger cities throughout the country".

A. It is not substantially true that sales in the north and west are handled by the New York City office. It is true that patronage is derived mainly 285
from department stores and men's clothing stores in larger cities throughout the country.

49. Q. Please state the total volume of sales giving the figures both in dollars and in cents and as to the number of units; please state number of employees in the plant in the following years: 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935.

A. The following are the figures, both in monetary volume and in total units, approximately, for

each of the four years from the beginning of the
286 Company's existence:

Year	Dollars	Units
1932	$ 800,000	80,000
1933	1,000,000	100,000
1934	1,500,000	100,000
1935	1,750,000	150,000

The Company had approximately 550 employees in 1932, 625 employees in 1933, 675 employees in 1934 and 800 employees in 1935.

287 Mr. Weinberg: For the purpose of the record we formally move to strike out from the record the questions and the answers as being irrelevant, incompetent and immaterial, and of no probative force, in this proceeding.

Mr. Wirin: I suggest that the motion be denied.

Trial Evaminer Perring: The motion is denied and an exception will be noted.

Mr. Wirin: I wonder if we could not save some of the record, as well as the in-
288 convenience to counsel of getting up on each occasion, by stipulating that the same objection is made, without repetition of it, and the same ruling is made.

Mr. Weinberg: I was going to suggest that in a few minutes. After the next one I will do that.

M.r Wirin: If you will give us the last word.

Mr. Weinberg: We will give you the last word.

Mr. Wirin: I ask that this be marked Board's Exhibit No. 6 for identification. This 289
is a certified copy of the Declaration with respect to application for a trade mark.

Mr. Green: Before it is offered in the record we wish to object to the admission of that paper which Mr. Wirin has stated is a declaration in whole or in part, because it is irrelevant, immaterial and incompetent, we ask that our objection be noted.

Mr. Wirwin: May I just suggest when the Examiner considers that objection, that this declaration, which is signed, purported to be
signed by Marks, and purported to be sworn 290
to before a Notary Public, and filed with the office of the United States Patent Office, contains a statement, amongst others, "that said trade mark" being the trade mark of the respondent company—"is used by said corporation in commerce among the several states of the United States."

We now offer into evidence Board's Exhibit No. 6, and ask that it be copied and become a part of the record in this proceeding, and be copied in the record at this point.

Trial Examiner Perring: There is no ob- 291
jection?

Mr. Weinberg: We move that it be stricken out on the ground that it is incompetent, irrelevant and immaterial.

Trial Examiner Perring: The motion is denied.

Mr. Green: The Trial Examiner will allow us an exception to his ruling?

292 **Trial Examiner Perring: Yes. The motion is denied and an exception will be noted. The exhibit may be copied into the record.**

(The paper referred to was received in evidence and marked, "Board's Exhibit No. 6.")

(Board's Exhibit No. 6 is as follows:)

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DEPARTMENT OF COMMERCE
United States Patent Office

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the Declaration, in the matter of the Trade Mark Registered to Harry Marks Clothing Company, Inc., November 13, 1928, Number 249,483.

294 **In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-fifth day of November, in the year of our Lord one thousand nine hundred and thirty-five and of the Independence of the United States of America the one hundred and sixtieth.**

(SEAL)

(SIGNED) CONWAY P. COE,
Commissioner of Patents.

Attest: D. E. Wilson,
Chief of Division.

DECLARATION. (737)

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State of Virginia,
City
County of Richmond, *ss.*:

Morton I. Marks, being duly sworn, deposes and says that he is the President of the Corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trademark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right 296 to use said trademark in the United States, either in the identical form or in any such near resemblance there to as might be calculated to deceive; that said trademark is used by said corporation in commerce among the several States of the United States; that the description and drawing presented truly represent the trademark sought to be registered; and that the specimens show the trademark as actually used upon the goods.

(Signed) MORTON I. MARKS

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Subscribed and sworn to before me, a Notary Public, this 29th day of May, 1928.

SAM'L STEINER
(NOTARY PUBLIC)

(SEAL).

My Commission Expires May 12th, 1931.

Mr. Wirin: In the interest of saving time

we shall be glad to stipulate, also, that coun-
298 sel will be deemed to have taken exception to any and every ruling by the Examiner that is adverse to the respondent.

Mr. Weinberg: Thank you.

Mr. Wirin: Will that save you the annoyance of taking your exceptions each time?

Mr. Weinberg: It will. As I say, after you offer your first affidavit—

Mr. Wirin: We come to that point now.

I ask that this folder, which contains an affidavit and five charts, numbered respectively 1 to 5, be marked as Board's Exhibit
299 No. 7 for identification.

Mr. Weinberg: Will you say in whose name that is?

Mr. Wirin: Being the affidavit of Harry K. Herwitz.

Mr. Green: Before that appears in the record we object to the testimony and the charts of the witness Herwitz, in whole and in part, on the ground that it is irrelevant, immaterial and incompetent, and of no probative force or value; that it contains numerous alleged statements of fact which are ad-
300 mittedly and confessedly not of the witness' own knowledge and, therefore, hearsay; that it is argumentative and contains improper and inadmissible conclusions of fact and law.

Mr. Wirin: May I state before ruling by the Examiner that this affidavit purports to be the statement under oath by an expert witness who qualified as an expert before giving any testimony, and the opinions of the witness, as an expert witness, are contained in

the affidavit in accordance with the rules of evidence which provide, as an exception to 301
certain other rules, that an expert may give his opinion after having first qualified as an expert. In any event, we now ask at this time that Board's Exhibit No. 7 for identification be read into the record at this point and become part of the record, but ask, further, that Charts Nos. 1 to 5, which counsel has seen, and which contain graphic and descriptive matter pertaining to matter dealt with in the affidavit, be marked as one exhibit separately. The reason I ask that is that, 302
manifestly, the reporter can not copy the charts in the record.

Mr. Weinberg: But the printed record, of course, will contain that.

Mr. Wirin: The printed record will contain the charts—

Mr. Weinberg: Yes.

Mr. Wirin: —if, as and when such printed record is made. I take it that our offer into evidence of this exhibit and the objection of counsel are before the Examiner for ruling.

Trial Examiner Perring: I will say that 303
the admissibility of this evidence is a matter which is a little difficult for him to pass upon, not being at all familiar with it, but that under the stipulation, and also due to the fact that we are not bound by the strict rules of evidence in this hearing, it is perfectly proper to admit this as evidence and, therefore, the objection is overruled. The exhibit may be copied into the record.

Mr. Green: Will you allow an exception?

Trial Examiner Perring: Yes.

(The paper referred to was marked for identification, "Board's Exhibit No. 7.")

304

(Board's Exhibit No. 7 is as follows:)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

AFFIDAVIT OF H. K. HERWITZ

305 State of New York,
County of New York, *ss*:

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

306

H. K. HERWITZ being first duly sworn deposes and says:

I have had a long and intimate connection with the clothing industry and am thoroughly familiar with it.

I graduated from the University of Chicago, in 1912.

Thereafter, I was a special expert for the United

States Tariff Commission, between 1919 and 1920, and also served as Associate Statistician for the Joint Congressional Commission on Reclassification of Salaries. 307

From 1920 to 1924, I was Statistician for the Amalgamated Clothing Workers of America. During the course of my service in this capacity, I conducted a number of investigations into the clothing industry, including an investigation as to wage conditions and competition in that industry.

From 1924 to 1931, I was Vice-President of the Amalgamated Bank of New York, 15 Union Square, New York City. This bank conducts a considerable banking business with numerous clothing manufacturers. 308

From 1933 to July 1935, I was Comptroller of the Men's Clothing Code Authority.

I am a member of the American Statistical Association.

* * *

OUTLINE OF TOPICS IN REGARD TO WHICH FACTS ARE PRESENTED.

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I. Development of Clothing Manufacture into a National Industry.

II. Raw Materials

III. Distribution of Men's Clothing.

IV. Mobility in the Men's Clothing Industry: Effect on Flow of Commerce.

* * *

I. *Development of Clothing Manufacture Into a*
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B. Gradual Shift from Home to Factory.

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* * *

I. DEVELOPMENT OF CLOTHING MANUFACTURE INTO A NATIONAL INDUSTRY.

824

A. *Production of Clothing Local, "Intra-State", in* 1789.

The most striking feature of the men's clothing industry is the revolutionary change which has taken place in the methods of producing men's clothing within the last century. The production of men's clothing consists in the processing of raw materials into fabrics suitable for use in such clothing, the manufacture of these fabrics into garments and the distribution of the clothing to the consumer. Up until a century ago the production

of men's clothing could hardly have been designated as an industry, any more than the work which a 325
woman does in her own home today, such as sweeping and cooking, can be described as an industry. In Colonial days, "the farmer and the farmer's family wore home-spun, and the spinning wheel and the huge timber loom were a part of nearly every household furniture and their noise was rarely silenced. If linens were wanted the flax was sown and weeded and pulled, and rotted, and broken, and swingled—for all of which processes nearly a year was required before the fibre was ready for spinning and bleaching on the grass and
making and earing. If woolens—the sheep were 326
sheared and the wool dyed and got into shape for wearing."(1) The housewife spun the yarn, wove the cloth, cut and sewed the garments, and fitted them to the wearer. Two years after the Constitution of the United States was adopted, in 1791, Alexander Hamilton presented a *Report on Manufactures* to Congress, in which he said, "it is computed in a number of districts that two-thirds, three-fourths and even four-fifths of all the clothing of the inhabitants are made by themselves.(2)

Even the one-fifth to one-third of the population
who, according to Alexander Hamilton, did not 327
make their own clothing during the last decades of the eighteenth century, did not procure their clothing from a clothing industry, in the modern sense of the term. This one-fifth or one-third of the inhabitants who did not make their own clothing, usually had tailors take up residence in their households for the purpose of measuring, cutting, finishing and delivering garments, adjusted to the demands of the members of the household. A

(1) Flint, Chas. L., and others, Eighty Years' Progress of the U. S., Vol. 1, pp. 22-23.

(2) Hamilton, Alexander, Works (N. Y. 1810). Vol. 1, p. 211.

328 fortunate few went to shops maintained by custom tailors where they selected their fabrics, were measured for the garment and returned later for fittings at various times while the garment was being sewed in the custom tailor's shop.

The only ready-to-wear clothing available to a person desiring it, was second-hand clothing, the "hand-me-downs of the well to do."

The amount of labor involved in making a man's suit, or overcoat, was so great as to make it impossible for the majority of the population to be comfortably clad. The expensive suit of the custom tailor was worn only on holidays or special oc-
329 casions and one such suit often did service for a life time. The coarse clothing of the farmer and working man was made at home and was often neither warm nor plentiful.

Except for the dealing in second-hand clothing, the production of clothing was a home or small shop occupation. It was not even a home industry, for the product of the home-labor was not sold in the market, but was home-consumed. The ready-made clothing manufacturing industry was unknown. Clothing was largely made and consumed
330 in the home. New clothing did not enter into commerce in more than an infinitesimal quantity. This was the situation during the Revolutionary War and the following decade when the Constitution of the country was being written and adopted by the States. The situation continued to exist in the main until past the middle of the 19th century. Until that time, the clothing industry remained local in character.

The industry for the production of men's clothing which exists today, is, then, a development only

of the last century. In 1935, the current year, some
300,000 persons are earning a livelihood by pro- 331
ducing cloth from which men's clothing is made,
manufacturing garments, and supplying them to
the customer. One-hundred fifty years ago, when
this nation was founded, no substantial number of
people gained their livelihood in this manner. A
comparatively small number of weavers made cloth
for sale, but woolen mills did not yet exist in the
country and much of the woolen cloth was im-
ported. The clothing worker as a wage earner was
not common. In such a situation, it is apparent
that there was no need for collective bargaining.
The housewife making the suit for her husband was 332
not dependent upon a factory owner, either as to
the return she should receive for making the gar-
ment, or as to the hours per day she should spend
in its fabrication. The custom tailor bargained
with his customer as to the price he was to receive
for making the garment. What he chose to accept
for making the garment and the hours per day
he should spend in fashioning it, were a matter for
his own decision. He was not a wage earner
working according to terms set by an employer
other than himself, nor was he competing with a 333
tailor in a distant state. New clothing was not
carried in retail stores where salesmen and altera-
tion hands worked on terms set by the employer.
The need for collective bargaining did not exist
in an industry which was not yet an industry,
and where the bulk of men's clothing was made by
members of the household for members of the
household.

B. *Gradual Shift from Home to Factory*

334 In the first quarter of the nineteenth century, the custom tailor's establishment, where people came to place orders, became more common. It also became a more common practice for the custom tailor to employ assistants at specified wages. The old system of apprentices, journeymen, and master tailors began to break down as the master tailor began to sub-divide his work and seek cheaper labor than that of journeymen. At first he took his work home and the members of his family helped him to make the garment. Later, neighbors and others
335 were engaged to assist him. Thus, the practice of home work grew up. From the early days of the ready-made clothing manufacture until today the industry has been notorious for home work and sweat shop conditions.(1)

A number of factors contributed to the transformation of the task of making clothing from a home process into a manufacturing industry. Woolen cloth became more readily available, and at lower prices, with the introduction of power machinery. With the growth of a middle class, a demand for neat clothing at lower prices than were
336 charged by the custom tailors arose from clerks, public school teachers, and others who were not in the manual laboring class.

The men's clothing industry received a powerful stimulus from what might be called an interstate demand: the requirements of the United States Government for uniforms during the Civil War. This demand brought into existence a large indus-

(1) Pope, J. E., Clothing Industry in New York, Univ. of Missouri Press. 1905.

try solely devoted to the purpose of supplying uniforms. The invention of the sewing machine just 337
before the Civil War made possible this development. From the thousands of measurements which were made in meeting the demands of the soldiers, data was accumulated on which standard sizes for the civilian customer could be based.

As data in respect to standard sizes was accumulated and a market began to develop, custom tailors began to manufacture for stock, rather than solely to order, especially in slack seasons. The industry was still most frequently carried on in connection with the custom trade, but establishments were 338
appearing which manufactured only for a market, rather than for individual customers. The trade in second-hand clothing continued, however, for many years, to hold its ground. As late as 1836, Senior in his treatise on Political Economy, remarked that "in this Country, the poor are, to a great extent, clothed with garments originally provided for their superiors." Senior, here, was speaking of the poor in the cities. Since the population of the country was still predominantly rural, a substantial part of the total production of clothing was still home-made.

339

C. Production of Men's Clothing a National Industry in 1935.

1. Making of Clothing a Leading Manufacturing Industry in the United States.

From a home industry, through a process of gradual transformation, the ready-made men's clothing industry has evolved its present propor-

tions. In 1935, more than 3,000 firms in the coun-
340 try, employing approximately 150,000 workers, work on men's ready-to-wear clothing. In addition to the 150,000 men and women who are employed in the cutting and fabrication of garments in the ready-made clothing industry, approximately 58,000 more are engaged in the manufacture of men's wear fabrics from which men's clothing is made.(1)

No medium for retail distribution was needed in the days when clothing was made at home, or in local mater-tailors' shops, but today nearly 100,000 workers are engaged in the wholesale and retail distribution of men's clothing.(2)

341 The men's clothing industry is among the twenty most important manufacturing industries in the country. It was sixteenth in number of wage-earners employed, nineteenth in value of product, and

342 (1) This is an estimated figure based on the assumption that the number of employees engaged in the manufacture of men's wear fabrics is proportionate to the value of men's wear fabrics as compared with the total value of woolen and worsted goods produced in 1929. U. S. Census of Manufactures.

(2) The Census of American Business 1933, Retail Distribution, Vol. 1, gives the average number of full-time employees in men's and boys' stores as 67,000 in 1929. In addition, there were more than 20,000 proprietors and a large number of part time workers. This does not include the employees engaged in the sale of men's clothing in stores other than men's and boys' stores.

sixteenth in the amount of wages paid, in 1929.(1) These rankings assume greater significance when 343
it is remembered that the rating is in relation to the more than three hundred manufacturing industries for which information in these respects is given by the United States Bureau of the Census.

2. Interstate Character of the Production of Men's Clothing

The production of clothing at the present time, consists of three main processes: the preparation of the cloth, the cutting and fabrication of the garment, and finally, the delivery of the garment to 344
the consumer, after such alterations are made as may be necessary to meet individual requirements. This differentiation of function appeared as the ready-made clothing industry replaced the home manufacture of men's clothing. Such differentiation is far from clear-cut today, however, and cloth manufacturing, clothing manufacturing, and the clothing distribution trade, remain today, as they were in Colonial days, parts of one process.

a) *Fabrics Woven Expressly for Men's Clothing.*

345

The weaving of woolens for the men's clothing industry is still an integral part of the process of making men's clothing. A large proportion of woolen cloths are manufactured specifically as "Men's Wear Fabrics" and are so classified in the Census of Manufactures.(2) "Men's Wear Fabrics" are a semi-finished, not a finished product. They

(1) U. S. Census of Manufactures 1929, pages 30-33.

(2) United States Census of Manufactures, 1929, page 415.

are fabrics which are manufactured expressly for
346 further processing into men's clothing. In fact, the designs and patterns are sometimes specified by the individual clothing manufacturer to meet his own needs. In some cases, clothing manufacturers weave their own woolens. Where they do not do this, the first step in what is commonly defined as the men's clothing industry proper is the making of specifications to the woolen manufacturer as to the cloth to be produced for the clothing manufacturer.

b) *From Woolen Mill to Sponging Plant.*

347

After the cloth has been procured, the clothing manufacturer examines it for defects and classfies the fabrics to determine the proper method of shrinking or sponging. Shrinking or sponging is a conditioning of the cloth. A number of manufacturers operate their own sponging departments, but many send their cloth to specialized sponging establishments for this processing. Firms which manufacture in distant states frequently have their cloth sent for the mill to the shrinking and sponging plants in New York, Philadelphia, or other cen-
348 ters to be processed.

c) *Cutting, Fabrication, and Assembly of Garment.*

After shrinking, the Men's Wear Fabrics are sent on to clothing firms located throughout the country where they are further processed. It is in the 3,200 men's clothing plants that the woolen fabrics are assembled with the materials and made into the men's and boys' suits, separate trousers,

overcoats and topcoats, which constitute the products of the industry. The processes in the men's 349
clothing factory are often partially assembly operations (assembling parts which have been manufactured elsewhere). Many firms do not make shoulder pads for coats in their own factories, but buy them from firms which specialize in making this part of the garment. Frequently, these shoulder pads, already made up, are bought in one state to be sent to another for setting in. The same is true of the canvasses which are used in men's coats. They are often fashioned in shops which specialize in their manufacture and sold to the clothing manu- 350
facturer for installation. These canvasmakers are as apt to be assembled with other parts into a garment in another state than the one in which they were made as they are to be used in the same state in which they were made.

The principal operations performed upon the cloth, after shrinking and sponging, are cutting, sewing and pressing. All of these operations may be performed in one plant, but, very frequently, they are performed in plants located in different states. Garments are often cut in one state and sewed in another.

351

After fabrication, the garments are shipped, for the most part, to a central assembly point, and then re-shipped to retailers throughout the country who offer them for sale to the public. The tendency of clothing firms to own their own sales distributing outlets has been increasing in recent years, thus integrating the industry on a national basis, as it was previously integrated on a home basis.

d) *Final Operations on Garment Performed in*
352 *Retail Store.*

Men's suits are not products which can be finally prepared for the consumer's use in the factory, as telephones and electric light bulbs can be and are. The garment must be fitted to the customer at the point of purchase. The store where the customer goes to buy may be a thousand miles away from the place where the garments it sells were fabricated. The last operations necessary before the delivery of the garment to the customer must, therefore, be performed by clothing workers in the
353 retail stores, rather than in the factory. Thousands of these clothing workers, or bushelmen, are employed throughout the nation in putting the finishing touches on the factory article before it reaches the consumer.

Not infrequently, garments which have been shipped by the manufacturer to the retailer are returned to him for the correction of latent defects or for other reasons. After such correction, the garments are again returned to the retailer. The relationship between the retailer, who may be located a thousand miles or more distant from the
354 manufacture, and the manufacturer, is an intimate and continuing one. The responsibility of the manufacturer for his garment does not cease when it has left his plant, but continues until the retailer, whether far away or near at hand, has inspected and accepted the garment. Frequently, garments are rejected by the retailer and returned to the manufacturer, and there has been a practice by some manufacturers of selling clothing on consignment.

3. Distribution of Clothing Manufacturing Establishments by States. 355

There are a large number of firms in the men's clothing industry in relation to the number of workers employed and the value of the product. A tabulation in 1935 showed that there were 3,225 establishments engaged in the fabrication of clothing. These establishments were distributed among the various states as indicated in Table I.

356

357

TABLE I.

358

Distribution of Clothing Establishments by States

State	1935 *Number*	1935 *Percent*
California	105	3.3
Colorado	3	0.1
Connecticut	7	0.2
Georgia	5	0.2
Illinois	269	8.3
359 Indiana	5	0.2
Kentucky	10	0.3
Louisiana	17	0.5
Maine	5	0.2
Maryland	329	10.2
Massachusetts	117	3.6
Michigan	10	0.3
Minnesota	19	0.6
Missouri	27	0.8
New Hampshire	2	0.1
New Jersey	190	5.9
New York	1622	50.2
360 Ohio	97	3.0
Pennsylvania	336	10.4
Tennessee	7	0.2
Texas	3	0.1
Virginia	5	0.2
Washington	3	0.1
Wisconsin	19	0.6
Other States	13	0.4
Total	3,225	100.0

Fifty per cent of the establishments are located in New York State, 95% are located in eight states: 361
New York, Pennsylvania, Maryland, New Jersey, Illinois, Massachusetts, California and Ohio. This concentration of 95% of the establishments in eight states is only possible because the product of the factory is sold on a national basis.

4. Garments Moved from State to State in Process of Fabrication.

The percentage of the total number of establishments in a state does not necessarily correspond with the percentage of garments out in that state, 362
nor with the percentage of man hours worked in the state, since, of course, firms vary in size, and since garments are often cut in one state and sewed in another. The men's clothing industry is peculiar as compared with a number of other industries, in that its product passes from state to state not only when the manufacturing process has been completed and the product is ready for sale, but in the actual course of manufacture.

Table II gives the percent of garments cut in each of the states where garments were cut in 1934, the states being listed in the order of their 363
importance.

Table III gives the percent of man-hours worked in the various states in January, 1935, the states being listed in the order of their importance.(1)

Table IV combines the information given in Tables I and II, but places in position for purpose of comparison, the percentage of garments cut in each state with the percentage of man-hours worked.(2)

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(1) Garments cut from Department of Commerce, Bureau of Census.

(2) Man-hours from Payroll Reports—United States Bureau of Labor Statistics.

TABLE II.

364

Percent of Garments Cut in Various States
Based on 1934 Average

State	*Percent of Garments Cut*
New York State	46.33
Pennsylvania	11.72
Ohio	11.17
Illinois	9.12
Maryland	7.20
Massachusetts	4.07
365 Missouri	2.14
Louisiana	1.48
Georgia	1.21
Tennessee	1.16
Indiana	.93
New Jersey	.70
Kentucky	.68
Virginia	.65
California	.43
Wisconsin	.35
Minnesota	.25
Oregon	.07
366 Porto Rico	.07
Colorado	.06
Texas	.06
Connecticut	.05
Michigan	.03
District of Columbia	.02
Iowa	.02
Rhode Island	.02
Nebraska	.01
Florida	——

Maine	——
Mississippi	——
New Hampshire	——
South Carolina	——
Washington	——
West Virginia	——
Total	100 %

367

Source: Reports to Department of Commerce, Bureau of the Census.

States which did not report any Garments Cut 368

Vermont	Wyoming
North Dakota	New Mexico
South Dakota	Arizona
Kansas	Utah
Delaware	Nevada
Alabama	Florida
Arkansas	Mississippi
Oklahoma	New Hampshire
Montana	South Carolina
Idaho	West Virginia
Washington	Maine

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TABLE III.

Percent of Man Hours Worked in Various States in January 1935

State	*Percent of Man Hours Worked*
New York State	33.82
Pennsylvania	16.33

	Illinois	11.20
370	Ohio	7.95
	Maryland	7.92
	New Jersey	6.53
	Massachusetts	3.04
	Louisiana	2.83
	Tennessee	2.68
	Indiana	1.93
	Virginia	1.69
	Kentucky	1.10
	California	.78
	Wisconsin	.43
	Iowa	.31
371	Missouri	.30
	Minnesota	.29
	Georgia	.25
	North Carolina	.22
	Oregon	.11
	Colorado	.09
	Rhode Island	.05
	Texas	.05
	Maine	.04
	Michigan	.04
	Connecticut	.02
372	District of Columbia	——
	Florida	——
	Mississippi	——
	Nebraska	——
	New Hampshire	——
	Porto Rico	——
	South Carolina	——
	West Virginia	——
	Total	100 %

Sources: Payroll Reports to United States Bureau of Labor Statistics. 373

States which did not report any man-hours worked

Vermont	New Mexico
North Dakota	Arizona
South Dakota	Utah
Kansas	Nevada
Delaware	Washington
Alabama	Florida
Arkansas	Mississippi
Oklahoma	New Hampshire
Montana	South Carolina 374
Idaho	West Virginia
Wyoming	

TABLE IV.

Percent of garments cut in various states based on 1934 average compared with percent of man-hours worked in various states in

January 1935 375

State	*Percent of Garments Cut*	*Percent of Man-Hours Worked*
California	.43	.78
Connecticut	.05	.02
Colorado	.06	.09
District of Columbia	.02	——
Florida	——	——
Georgia	1.21	.25

	Illinois	9.12	11.20
376	Indiana	.93	1.93
	Iowa	.02	.31
	Kentucky	.68	1.10
	Louisiana	1.48	2.83
	Maryland	7.20	7.92
	Massachusetts	4.07	3.04
	Maine	——	.04
	Michigan	.03	.04
	Minnesota	.25	.29
	Mississippi	——	——
	Missouri	2.14	.30
	Nebraska	.01	——
377	New Hampshire	——	——
	New Jersey	.70	6.53
	New York State	46.33	33.82
	North Carolina	——	.22
	Ohio	11.17	7.95
	Oregon	.07	.11
	Pennsylvania	11.72	16.33
	Porto Rico	.07	——
	Rhode Island	.02	.05
	South Carolina	——	——
	Tennessee	1.16	2.68
	Texas	.06	.05
378	Virginia	.65	1.69
	Washington	——	——
	West Virginia	——	——
	Wisconsin	.35	.43
	Totals	100%	100%

States which did not report any garments cut or man-hours worked on men's clothing 1934 379

Vermont	Wyoming
North Dakota	New Mexico
South Dakota	Arizona
Kansas	Utah
Delaware	Nevada
Alabama	West Virginia
Arkansas	Washington
Oklahoma	South Carolina
Montana	New Hampshire
Idaho	Mississippi 380
	Florida

The three states of New York, Ohio and Massachusetts, cut 61.57 % of the total number of garments cut, while in the same three states only 44.81 % of the man-hours were worked.

	% of Garments Cut in 1934	*% of Man-Hours Worked Jan. 1935* 381
Massachusetts	4.07	3.04
New York	46.33	33.82
Ohio	11.17	7.95
Totals	61.57%	44.81%

382 In four States, Maryland, Illinois, New Jersey and Pennsylvania, 28.74% of the garments were cut, while 41.98% of the man-hours were worked there. New Jersey cut only .70 of the total of garments cut, but 6.53% of the man-hours were worked there.

Maryland	7.20	7.92
Illinois	9.12	11.20
New Jersey	.70	6.53
Pennsylvania	11.72	16.33
Totals	28.74%	41.98%

383 In Virginia, the same discrepancy between percentage of garments cut and percentage of man-hours worked occurred.

These figures evidence the fact that garments are transported from state to state in the process of manufacture. The fact that the proportion of garments cut is in no state the same as the proportion of man-hours worked is corroborative of the fluidity of the industry and of the fact that the operations carried on by an individual entrepreneur may be interstate.

384 The names of factories which receive for fabrication, garments which have been cut in other states, comprise a long list. Factories in many states would be included. Some of these factories are independently owned shops which fabricate the garments on contract for firms which cut in other states; others are plants owned by the same firm, but carrying on different operations on the garments in separate plants in more than one state.

5. No Men's Clothing Manufactured in Twenty-One States. 385

It will be noted that there are twenty-one states in which no garments are cut and no man hours worked on men's clothing. As will be seen from the later discussion of retail distribution of men's clothing, such clothing is sold in every state in the United States. Since there are twenty-one states in which no garments were cut or man-hours worked on men's clothing, it is clear that the clothing which is sold in these states has been brought in from other states.

D. *Summary* 386

Ready-made clothing was almost unknown before 1825. No clothing factories existed in Colonial days. Both cloth and clothing were made at home, for the mass of the people, and consumed at home. No workers gained their livelihood by working for wages in clothing factories. The industry was wholly local in character.

By contrast, in 1935, more than 3,000 factories in 27 states work on men's ready-made clothing. 150,000 wage earners gain their living from employment in these factories. Another 50,000 men and women 387
work for wages making the cloth out of which the garments are made. Several thousand other transport the garments from one place to another during the process of manufacture, or from the place of manufacture to the final consumer. More than 50,000 more earn their daily bread by selling, fitting, or altering the suits and overcoats which often have come to them from distant factories.

The production of men's clothing has become a

three-fold process by which wool is transformed in-
388 to suits and overcoats for men's wear. Every stage in the process is part of one coordinated, interconnected, inter-dependent process.

No clothing manufacturer could exist using only materials which were produced in his own state, fabricating the product entirely within this state and selling only to customers in the same state. The bulk of men's wear fabrics are manufactured in woolen mills in the New England States. The fabrics are shrunk or sponged in the clothing manufacturer's own plant, which may be located in any of 27 states in the Union, or sent by manufacturers
389 operating in any of these 27 states to the important sponging centers, New York and Philadelphia, for this processing. They may then be cut in one state and sewed in another. The trousers of one suit of clothes may even be made in one state while the coat is made up in another. When assembled, these suits are distributed to tens of thousands of men's and boys' clothing stores, clothing and furnishing stores, dry goods and department stores throughout the country. In the stores, the garment is finally altered and adapted to the consumer's
390 needs, or returned to the factory for alteration. The wool which goes into the fabric at last becomes a final product when it is on the consumer's back. The making of men's clothing, which one hundred and fifty years ago, was a home process which could be confined in all its aspects to the boundaries of one farm, is now carried on on a national basis without regard to state lines.

II. RAW MATERIALS

The chief raw materials used in the men's clothing

industry are woolen and worsted cloth, rayons, silesia, canvasses, sewing materials, and cuttons. 391
Of these, woolen and worsted cloth is by far the most important. Such cloth represents, on the average, about 75% of the total cost of raw materials.

The clothing manufacturer occasionally operates his own woolen mill. In this case, he of course selects and purchases his own raw wool or yarns. More frequently, the clothing manufacturer lays down specifications as to the kind and quality of woolen cloth which shall be manufactured for him. If he neither manufactures his own cloth nor has 392
it manufactured according to specification, he buys such fabrics as are offered on the market by the woolen mills.

A. *Concentration of Raw Wool Production*

The manufacturer of woolen cloth, in order to manufacture fabrics for use in men's wear, purchases such raw wool as is suitable for this purpose. Much raw wool is imported from foreign countries, but domestic wool is produced in many states. The chief producing areas are Texas and the Rocky Mountain and Pacific regions. Virginia's production is insignificant. The U. S. Department of Commerce reported in 1933, 28 states which produced an appreciable amount of raw wool. (1) Among these there are listed states which produce as low as 3/4 of 1%. Virginia, not being mentioned, therefore produced somewhat less than three-fourths of 1% of the total production of raw wool in the

393

(1) Statistical Abstract of the U. S. 1934, page 593.

country, while Texas alone produced 20%. Texas,
394 the Mountain States, and the Pacific States combined produced more than 70% of the total production of raw wool. Table V lists the production of raw wool by states for the year 1933.

TABLE V

State sources of raw wool production—1933

	State	*Thousands of Pounds*
395	United States	364,730
	Texas	74,800
	Montana	33,276
	Wyoming	29,808
	California	24,032
	Oregon	18,105
	Utah	17,630
	New Mexico	17,430
	Idaho	17,372
	Ohio	15,810
	Colorado	12,774
396	South Dakota	9,200
	Michigan	7,840
	Iowa	7,410
	Missouri	7,351
	North Dakota	7,056
	Minnesota	6,814
	Nevada	6,708
	Illinois	5,749
	Washington	5,640
	Arizona	4,988

Indiana	4,599
Kentucky	4,170
Kansas	3,461
Pennsylvania	3,411
West Virginia	3,021
Wisconsin	2,774
Nebraska	2,731
New York	2,701
Other states (a)	8,069
Pulled wool (b)	64,200

397

The production of raw wool is, then, concentrated in the western states. By contract, the bulk of woolen and worsted goods are manufactured in the New England States. A large proportion of the raw wool must therefore be shipped from western areas to eastern areas for manufacture. Table VI gives the percentage of woolen and worsted goods produced in each of the New England states. Virginia produces less than one-half of one percent of the total value of woolen and worsted goods manufactured in the United States.(1)

398

399

(a) States with production of 2,500,000 lbs. or less.

(b) This item covers wool pulled from pelts.

From: U. S. Dept. of Commerce, Statistical Abstract of the U. S. 1934, page 593.

TABLE VI.

400

Percentage of woolen & worsted goods manufactured in New England States in 1929

Total, U. S.		$827,006,348
Woolen Goods		
Connecticut	$22,457,785	
Maine	31,782,318	
Massachusetts	71,080,687	
New Hampshire	18,688,433	
Rhode Island	16,789,514	
Vermont	7,191,773	
401		
Total		167,990,510
Worsted Goods		
Connecticut	27,890,179	
Maine	22,119,599	
Massachusetts	171,817,773	
Rhode Island	138,197,177	
Total		360,024,728
402		
Total, New England States		528,015,238
Percentage New England States produced of Total 63.6 %		

* Total for New England States would be slightly higher if figures for amount of worsted goods produced in New Hampshire and Vermont were available.

Source: U. S. Census of Manufacturers, pages 412-414.

(1) Computed from figures page 412, 1929 Census of Manufacturers.

B. *Concentration of Production of Men's Wear Fabrics* 403

The production of "Men's Wear Fabrics" is the largest single item both in quantity and value of product of the wool textile industry. Table VII indicates the importance of the production of this type of goods to the woolen industry as compared with other fabrics.(5)

TABLE VII.

Relation of Men's Wear Products to Total Production of Wool Textiles
Wool Textile Industry
Principal Products
1933 404

Class of Product	*Quantity (Thousands of pounds)*	*Value (Thousands of dollars)*
Total	475,731	$457,880
Men's Wear Fabrics	116,590	157,602
Women's Wear Fabrics	61,012	71,333
Blankets—all wool	10,145	8,894
Yarns for sale	112,939	94,367
Others	175,045	125,684

405

Source: U. S. Census of Manufacturers 1929, and release for 1933 Woolen and Worsted Goods.

The value of the production of Men's Wear Fabrics exceeded three hundred million dollars in 1929. These fabrics were produced chiefly in the New England states. 21 states produced no men's wear fabrics whatsoever. Several of these states

which produce no men's wear fabrics do produce
406 men's clothing.(2) Table VIII lists the value of production of the principal materials used by the men's wear industry by kinds and states for 1929.

TABLE VIII.

Value of production of principal materials used by the Men's Wear Industry by kinds and states, 1929

(in thousands)

407		*Suitings & Pantings*	*Over-coatings*	*Top-coatings*
	U. S. Total	$279,952*	$31,619	$10,468
	Massachusetts	90,335	15,142	1,590
	Rhode Island	57,225	868	
	Pennsylvania	22,881		
	Connecticut	13,734	3,569	2,251
	Maine	13,292	2,885	662
	Michigan	304		
	New York	11,802		
	New Jersey	6,398		
	New Hamphire	4,743		
408	Oregon		1,351	
	Vermont	793	907	
	Wisconsin		632	
	Other States	49,448	6,265	5,965

* Total of individual amounts given differs slightly from the actual total for the United States because amounts are given to the nearest thousand dollars only.

(2) Census of Manufacturers, 1929.

Source: U. S. Census of Manufacturers, 1929.

Note: Woolen, Worsted and Woolen and Worsted materials made with cotton or manipulated warps are here combined. Subdivisions of various kinds are combined. The figures for these states would be increased if the Census disclosed individual state figures for certain items. 409

The value of the production of Men's Wear Fabrics in Virginia is not given in the Census figures; its production is lumped with "other states". Since its total production of woolen and worsted goods of all types, however, is so small (less than one-half of one percent of the United States total), it is obvious that its production of Men's Wear Fabrics cannot be large. Such woolen mills as are located in Virginia, sell through New York.(3) 410

1. Suitings & Pantings

The total production of more than three hundred million dollars worth of men's wear fabrics in 1929 falls into two chief classifications: the first, suitings and pantings; the second, overcoatings. The total value of the suitings and pantings fabrics for men's wear produced in the United States in 1929 was $270,952,000.(4)

411

Value of Sutings & Pantings Produced in 1929	
Massachusetts	$90,335,000
Rhode Island	57,225,000
Connecticut	13,734,000
Maine	13,292,000
Vermont	793,000
Total	$175,379,000

(3) See Davidson's Textile Blue Book, 1935 edition.

(4) All types, woolen, worsted, and woolen and worsted

412 As the above table shows, $175,379,000 worth of these fabrics was produced in the five New England States, Massachusetts, Rhode Island, Connecticut, Maine and Vermont. That is almost 65 % of the total.

2. Overcoatings

Of a total value of overcoatings produced amounting to $31,619,000, 74 % was produced in the same 5 New England States:

Value of Overcoatings Produced in 1929

413

Massachusetts	$15,142,000
Rhode Island	868,000
Connecticut	3,569,000
Maine	2,885
Vermont	907,000
Total	23,371,000

While these five New England States produced 65 % of the total value of suitings, pantings and overcoatings in 1929, in the same year they produced less than 4 % of the total value of men's
414 clothing.(2) The total value of the men's clothing produced in the five states was approximately $35,000,000. Since the value of suitings, pantings and overcoatings produced in these five states was nearly $200,000,000, it is apparent that large quantities of men's wear fabrics were sent out of these states for manufacture into men's clothing in other states.

(1) U. S. Census of Manufacturers, 1929.

(2) U. S. Census of Manufacturers, 1929.

C. *Rayon Fabrics*

415

While woolen and worsted fabrics are the most important materials used in men's clothing, a considerable quantity of rayon fabrics is used for linings. Only fourteen states, listed below, produced rayon, silk and rayon, or cotton and rayon goods in 1929:

Connecticut	New Jersey
Delaware	New York
Maine	Ohio
Massachusetts	South Carolina
Michigan	Rhode Island
North Carolina	Virginia
New Hampshire	Pennsylvania

416

The largest producer of men's clothing, New York State, which cut more than 46 % of the total men's clothing cut in 1934 produced only 3.7 % of the total. Illinois, which cut over 9 % of the men's garments, produced none. 16 states and the District of Columbia which cut 25.19 % of the garments cut in 1934 produced no rayon or rayon mixture produced in 1929:(1)

California	Maryland
Colorado	Minnesota
District of Columbia	Missouri
Georgia	Nebraska
Illinois	Oregon
Indiana	Tennessee
Iowa	Texas
Kentucky	Wisconsin
Louisiana	

417

Table IX gives the percentage of production of rayon fabrics by states.

(1) U. S. Census of Mannufacturers, page 339.

TABLE IX.

418

Production of rayon fabrics in 1929 by States

	Value of Production		*% of Production*
New York State			
All Rayon	$ 993,279		
Silk & Rayon	1,673,457		
Rayon & Cotton	147,550	$ 2,814,286	3.7%
New Jersey			
419 All Rayon	$5,795,815		
Silk & Rayon	9,663,495		
Rayon & Cotton	2,595,536	$18,054,846	23.9
Pennsylvania			
All Rayon	12,963,980		
Silk & Rayon	10,878,711		
Rayon & Cotton	3,325,790	27,168,481	35.8
Rhode Island			
420 Silk and Rayon	164,177		
Rayon and Cotton	2,325,548	2,489,725	3.3
Massachusetts, all rayon		1,314,626	1.7
North Carolina, all rayon		5,518,923	7.3
Virginia, all rayon		374,003	.5

All Other States				421
All Rayon (Conn. Maine, Michigan, New Hampshire, Ohio, Rhode Island)	7,777,641			
Silk and Rayon (Connecticut, Delaware, Maine, Massachusetts, Michigan, New Hampshire, North Carolina, Virginia)	2,048,650			
Rayon and Cotton (Connecticut, Maine, Massachusetts, New Hampshire, North Carolina, South Carolina, Virginia)	8,222,243	18,048,534	23.8	422
Total		$75,783,424	100.0	

423

Virginia produced only one-half of one percent
424 of the total production of rayons in 1929.

D. *Buttons*

Buttons are another item used in the production of men's clothing. Virginia produces no buttons, but does produce men's clothing. Buttons, therefore, must be brought in from other states for use in the men's clothing factories in that state.(1) 5% of the total of men's clothing cut in 1934 was cut in states where no buttons are produced.

425 ### E. *Miscellaneous Materials*

Cotton fabrics, silesia for pockets, felt, haircloth, jute and hemp fabrics, are other materials used in men's clothing. The areas of production of these items, like those of woolen cloth, rayons, and buttons, bear no direct relation to the areas of production of men's clothing. The raw materials for these products are often produced in one state, shipped to another for manufacture, sold in another, and finally transported to still another for use in making men's clothing.

426 ### F. *Summary on Raw Materials*

Only a list of the materials which go into the making of a man's suit or overcoat is needed to show that the men's clothing industry draws on the world, not merely on a single state in which a particular factory may be located, for its raw materials. Wool from Australia, hemp from Manila, jute from the East Indies, flax from Ireland, may all be pres-

(1) U. S. Census of Manufacturers.

ent, in altered form, in the suit which the consumer puts on and wears out of the store. 427

State lines in the United States fade into indecipherability in the gathering of the materials which ultimately emerge as coats, trousers, vests, and overcoats. Seventy per cent of the domestic production of raw wool comes from the Western states. Nearly 65% of the total production of men's wear fabrics comes from five New England states which produce no raw wool or only a negligible quantity of it. Five Middle Atlantic and Mid-Western states, manufacturing 85% of the total production of men's clothing, make these 428
fabrics from New England, which have been made from wool from the West, into garments.

Wood fibres for celanese, cotton linters in rayon, horn or bone in buttons, may have been trekked across as many state boundaries as the wool from the Western sheep before they finally come to rest in a man's suit.

It is therefore a far cry from the days of the Fathers of our Country when the early settler clothed himself in the products he could grow and fabricate. The speed with which trains, trucks, and planes could bring him materials from regions 429
that then remained quite undiscovered would hardly have occurred to him even in his most ambitious dreams.

III. DISTRIBUTION OF MEN'S CLOTHING

A. *National Market for Men's Clothing*

A careful statistical analysis of the distribution of men's clothing discloses that every State in the Union is a member of the national market for the men's clothing industry. Distribution of the manu-

factured product, is not only interstate but wholly
430 national in scope.

The product of the men's clothing industry is disposed of in a variety of ways. Naturally, a large number of firms in the industry do not sell their products on the open market since they manufacture garments only on contract. Of the 3,600 firms in the industry in 1929, 2,167 were manufacturing plants. The total value of sales of these 2,167 plants was $833,242,000 in 1929.(1) This product was sold to independent retailers, independent wholesalers, retail branches owned by the manufacturers, whole branches owned by the manufac-
431 turers, directly to household consumers and directly to industrial or other large purchasers. Since 63% of the total value of sales was made to the thousands of retailers located throughout the country, it is clear that the clothing manufacturer tends to go directly to his market rather than disposing of his product through a few middlemen.

Only 14% of the product was disposed of to independent wholesalers. Another 6% was sold to wholesaler branches owned by the clothing manufacturer. The clothing manufacturer who owns his own wholesale branches is in close touch with con-
432 sumer demand through such branches.

The necessity of being in even closer touch with the consumer, however, has resulted in the establishment by 125 concerns of retail branches of their own.

Two hundred ninety nine (299) concerns have achieved direct contact with the consumer by selling their product through house-to-house can-

(1) Fifteenth Census of the United States; Distribution of Manufacturing Plants.

vassers. These canvassers have swatches from which the customer selects the material for his suit or overcoat. The canvasser takes the individual measurements of the customer, the garment is manufactured in accordance with these measurements and is shipped directly to the customer. Table I gives detailed figures as to the number of plants employing these various methods for distribution of their product and the percentage that is disposed of through each method. 433

TABLE X.

Distribution of sales of manufacturing plants by type of purchaser, 1929 434

Type of Purchaser	*Number of plants* (a)	*Value of Sales (in thousands)*	*Per cent of Total Sales*
Total Distributed Sales	2,167 (b)	$833,242	100.0
Sales to Retailers	1,416	524,831	63.0
Sales to Wholesalers	472	118,747	14.2
Sales to Manufacturer's Own Retail Branches	125	69,161	8.3
Sales to Manufacturer's Own Wholesale Branches	80	49,752	6.0
Sales to Household Consumers	299	48,813	5.9
Sales to Industrial And Other Large Purchasers	163	21,938	2.6

435

Source: Fifteenth Census of the United States: Distribution of Sales of Manufacturing Plants.

(a) Regular factories only.

(b) Number of plants given for "total distributed sales" is not the sum total of the number of plants given for the six sub-groups because some plants fall within more than one category, and are, therefore, counted more than once.

B. *The New York Market:*

436 Distributing Center for Factories in Widely Separated Areas.

Sales are made to retailers chiefly through two methods, first, that of sending salesmen out to travel from state to state to call upon prospective customers in various localities throughout the United States and second, by maintaining stocks of goods and show rooms in New York City which are visited by buyers from stores throughout the country. Large numbers of manufacturers who fabricate their garments outside of New York State
437 maintain such sales rooms in New York City.

The Daily News Record, a publication devoted largely to reporting news in the textile, dry goods and men's clothing fields lists daily the arrivals of buyers of men's clothing, together with the name of the retail firm which they represent. The New York Times also lists daily the arrival of buyers including buyers of men's clothing. The "Arrivals of Buyers" column of the *Daily News Record* for Thursday, July 25, 1935 lists buyers of men's clothing from Baltimore, Md., Boston, Mass., Pittsburg, Pa., and Washington, D. C. The "Arrivals
438 of Buyers" column of the New York Times for Tuesday, November 19, 1935 lists buyers of men's clothing from Baltimore, Md., Boston, New Bedford and Worcester, Mass., New Orleans, La., and St. Louis, Mo.

These out-of-town buyers visit the show rooms of the various manufacturers and make their selections from samples of stock which the manufacturer has on hand for immediate delivery or place orders

in given styles, materials and sizes for garments which are to be manufactured for later delivery. 439
The New York addresses of the buyers are published in the "Arrivals of Buyers" columns and salesmen from the various New York sales offices may call on them to display their lines if the buyer does not visit the show room of the manufacturer. There are several hotels near the garment district of New York which are known as "buyers" hotels. Certain large buildings in New York City are devoted almost exclusively to sales and show rooms of men's clothing manufacturers. The out-of-state buyer coming to New York is able to inspect the stock of a large number of manufacturers and to 440
compare prices. He is not limited in his selections to garments fabricated in any one locality.

Two directories of the men's wear industry are published: the American Clothier, a Directory of the Men's and Boys' Clothing Trade, and Fairchild's Men's Wear. These directories which are circulated nationally to buyers of men's clothing, list the sales offices of men's clothing firms. *Men's Wear* includes a list of "New York resident buyers and buying offices", which includes the names of a number of New York buying offices for stores located outside 441
the state.

Many clothing firms advertise their products in these two publications. A number of them list selling offices in New York City and in cities in other states as well. Eagle Clothes, for example, manufactures in New York City, lists showrooms in New York, at the Great Northern Hotel, Chicago, Illinois, and also at the Biltmore Hotel, Los Angeles, California. Morris Asinof and Sons, a firm which manufactures in Massachusetts, lists showrooms in New York and Chicago.

Friedman-Harry-Marks advertises on page 80 of
442 the Spring, 1935, edition of the American Clothier. The address of the New York offices and showrooms is included in the advertisement, as well as the address in Richmond, Virginia. In this publication the firm advertises "A popular priced line of summer clothing". Both the trade names "Rockingham and 'Rockool' are used in this advertisement. The firm of Friedman-Harry-Marks also advertises in Fairchilds Men's Wear Directory, Fall, 1935, edition (page 249). This advertisement reads in part that "Rockingham clothes presents for Fall a popular priced line of hand-tailored worsted
443 suits and top coats . . . makers of 'Rockool' tropicals".

The New York market is, then, the great market of the country for the sale of men's clothing. Firms manufacture in many states, advertise in newspapers and periodicals nationally but maintain showrooms in New York City. Buyers from all over the country come to inspect the lines on display and make purchases for their retail establishments.

In addition to maintaining sales rooms and stocks
444 of goods in New York City, many firms also maintain such show rooms and stocks in other cities. Chicago is a well-known market center, as is also Los Angeles. Suits and overcoats manufactured in the East are often sent to these Western show rooms for sale there. The garments remain the property of the manufacturer as they pass in transit and while in stock in the distant state.

C. *Retail Outlets Located in Every State*

To sell to the thousands of retail stores, however, which cannot send buyers to New York, the manufacturers send salesmen out on the road with sample lines. These salesmen cover every part of

the United States. Tens of thousands of stores, including men's and boys' clothing stores, furnishings stores, family clothing stores, department stores, general stores, and dry goods stores, sell men's clothing. It is these stores which are visited by the traveling salesmen. Sales of men's and boys' clothing at retail reached a total of more than a billion dollars in 1929. More than half of the total retail sales of men's and boys' suits and overcoats in that year were made by the 28,000 men's and boys' clothing and furnishing stores throughout the country. (1) The remainder is sold in stores of other types. Table XI gives the sales of men's and boys' suits and overcoats by type of stores. (2)

445

446

TABLE XI.

Type of Store:	*Number of Stores*	*Value of Suits and Overcoats sold:* (3)
Men's and Boys' Clothing	3,386	$166,000,000.
Men's and Boys' Clothing and Furnishing Stores	14,049	431,000,000
Family Clothing Stores	10,551	137,000,000.
Department Stores	54,636	165,000,000.
Dry Goods Stores		6,000,000.
General Merchandise Stores		27,000,000.
Mail Order and General Merchandising Stores	104,000	10,000,000.
General Stores		
	186,622	$1,020,000,000.

447

(1) The 2,800 men's and boys' clothing, and furnishing stores include men's and boys' hats stores—men's furnishing stores which are not listed in table XI.

(2) Fifteenth Census of the United States, Retail Distribution, Apparel Retailing, CH. IV.

(3) These figures do not include sales of $114,000,000. worth of "other clothing—men's and boys' ", which is sold in these same stores.

Close to 100,000 men and women, situated in
448 every state of the Union gained their livelihood from selling men's clothing and furnishings in men's and boys' stores alone in 1929. (4)

The decline of the consumer's ability to buy men's clothing between 1929 and 1933 is evidenced by the fact that the number of men's and boys' stores declined from 28,000 in 1929 to 19,000 in 1933, while the number of employees and proprietors declined from 95,000 in 1929 to 61,000 in 1933. The amount of sales by such stores declined from more than a billion dollars ($1,192,000,000) in 1929 to less than a half billion ($489,000,000) in 1933.

449 Table XII gives the number of these stores by states, together with their sales, and the percent which the sales in each state represent of the total sales in such stores in the United States.

TABLE XII.

Stores and sales by states and geographic divisions

Men's and boys' clothing and furnishing stores

450 States	Total Stores	Total Sales	Per Cent of U. S. Total
U. S. Total	28,197	$1,192,722,773	100.00
New England	2,415	93,248,856	7.82
Connecticut	531	20,345,864	1.71

(4) Census of American Business 1933, Retail Distribution, Volume I.

Maine	304	9,389,575	0.79	
Massachusetts	1,145	49,106,037	4.12	451
New Hampshire	174	4,502,319	0.37	
Rhode Island	172	6,827,736	0.57	
Vermont	89	3,077,325	0.26	
Middle Atlantic	9,095	391,165,842	32.80	
New Jersey	1,171	42,042,849	3.53	
New York	5,198	252,632,434	21.18	
Pennsylvania	2,726	96,490,559	8.00	
East North Central	6,494	294,040,512	24.65	
Illinois	2,202	105,796,531	8.87	
Indiana	695	28,966,041	2.43	
Michigan	1,201	59,151,941	4.96	452
Ohio	1,679	72,934,500	6.11	
Wisconsin	717	27,191,499	2.28	
West North Central	2,797	105,120,922	8.81	
Iowa	643	25,360,090	2.13	
Kansas	397	15,060,033	1.26	
Minnesota	611	22,550,815	1.89	
Missouri	610	24,525,938	2.06	
Nebraska	280	9,202,001	0.77	
North Dakota	101	3,505,364	0.29	
South Dakota	155	4,916,681	0.41	
South Atlantic	2,177	84,655,570	7.10	453
Delaware	68	3,184,949	0.27	
District of Col.	181	10,297,972	0.86	
Florida	290	9,140,426	0.77	
Georgia	223	9,832,344	0.83	
Maryland	399	12,682,578	1.06	
North Carolina	284	10,657,370	0.89	
South Carolina	118	4,704,436	0.40	
Virginia	368	14,364,061	1.20	
West Virginia	246	9,791,434	0.82	

East South Central	837	36,734,324	3.08
Alabama	192	7,312,258	0.61
Kentucky	282	13,052,366	1.10
Mississippi	120	4,551,949	0.38
Tennessee	243	11,817,751	0.99
West South Central	1,380	62,665,265	5.25
Arkansas	124	4,284,990	0.36
Louisiana	225	9,583,021	0.80
Oklahoma	287	14,491,948	1.21
Texas	744	34,305,306	2.88
Mountain	761	28,622,035	2.40
Arizona	70	3,003,757	0.25
Colorado	232	8,218,069	0.69
Idaho	93	3,336,784	0.28
Montana	143	5,224,996	0.44
Nevada	29	870,591	0.07
New Mexico	34	1,516,018	0.13
Utah	94	4,146,504	0.35
Wyoming	66	2,305,316	0.19
Pacific	2,241	96,469,447	8.09
California	1,630	71,620,996	6.00
Oregon	214	8,814,060	0.74
Washington	397	16,034,391	1.35

Source: Fifteenth Census of the United States, Retail Distribution, Apparel Retailing.

D. *National Advertising for National Market*

It will be noted that every single state in the United States has its quota of stores which sell only men's and boys' clothing and furnishings. While more than one-half of all the men's and boys' suits and overcoats sold in the country are sold in the 28,000 men's and boys' clothing and furnishing

stores, many manufacturers also attempt to reach the thousands of family clothing stores, department 457
stores and other stores in which men's clothing is sold. In order to do this, they assist their salesmen by advertising. As has been noted, a number of firms advertise in the directories of men's wear firms. Othres advertise in the "Daily News Record", the trade publication of the men's wear industry. These advertisements frequently use the registered tradenames or trademarks of the firms advertising, and often note that their product is "nationally known". Other firms advertise their product in magazines of nationwide circulation. Many firms 458
use both national magazines and newspaper advertising to promote sales of their products.

The advertising is national scope because both the potential and the actual market is the whole country and every state in the United States. Eleven firms alone spent more than a half million dollars in magazine advertising 1929.(1)

A number of firms advertise in newspapers in more than one state. Hart, Schaffner and Marx, a Chicago firm, advertised in newspapers in ten states in 1933. Cohen, Goldman, a New York concern, advertised in newspapers in five states in the same 459
years.(2)

E. *Competing Salesmen Travel Throughout Country*

The object of this advertising is to create a demand for the product on the part of the con-

(1) National Advertising Records, Chicago, Illinois.
(2) Media Records, New York City.

sumer. Whether the field has been prepared for
460 the salesmen by national advertising or not, it is customary for most manufacturers in the men's clothing industry to send salesmen out to acquaint retailers with their product and attempt to sell it. These salesmen carry sample lines with them. Since the main trips of the salesmen are made at specified times during the year, in advance of the Fall and Spring retail selling seasons, it is not unusual for salesmen from several clothing stores to arrive in a particular city at the same time. In such a city as Dallas, Texas, for example, a particular hotel is known as the hotel at which commercial
461 travelers stop. Clothing salesmen will register there. These salesmen will have the name of the company they represent posted on the announcement board in the lobby, and it is not unusual to see a fairly lengthy panel of such names on any one day in the selling season. The salesmen arrange for show rooms in the hotel where they can open their sample trunks and display their wares. Stores in the city and in nearby localities are then invited to send their representatives to inspect the line. A buyer for a Texas store would thus have an opportunity to inspect sample lines of clothing from
462 many parts of the country. He will usually not content himself with examining the product offered by a New York manufacturer, but may also inspect the goods offered by a Chicago firm, or a Virginia firm. The Texas buyer thus has the advantage of being able to select his purchases on the basis of quality and price, regardless of the location in which they are manufactured.

Texas buyers will as a matter of fact, be forced to buy the major part of their product from concerns

manufacturing in other states. The total value of men's suits and overcoats sold in Texas in 1929 was 463
$39,000,000, whereas less than $1,000,000. worth of men's clothing was produced in the state of Texas.

This procedure of the retail traveling salesmen is repeated in city after city, in state after state, throughout the country. Even in cities where large clothing factories are located, salesmen from other companies, often from distant points, arrive to show their lines. This is true because the cost of shipping men's garments is low in proportion to their total value and does not deter the retailer from having goods delivered from a distant point if the price 464
and quality are attractive. It is also true, because, while one or more retailers in a city may carry the goods manufactured by the firm located in that city, all retailers will not wish to sell the same merchandise, and, therefore, many of them buy from other producers.

F. *Sales of Clothing in 21 States Which Produce No Men's Clothing.*

In 21 states having 3,287 men's and boys' clothing stores, more than $130,000,000 worth of men's and boys' suits and overcoats were sold in 1929, yet 465
no men's clothing was produced in these states. Twelve percent of the men's clothing sold in 1929 was sold in these states where no clothing was made. These twenty-one states had a population of more than 22,000,000, nearly a fifth of the population of the country; the men and boys residing in them bought ready-made clothing, but they purchased clothing which had been made in other states.

466 Table XIII gives the sales of men's and boys' suits and overcoats in states where no men's clothing was produced.

TABLE XIII.

Sales of men's and boys suits and Overcoats in states where no men's clothing was produced

	Total Sales, Men's & Boys' Suits & Overcoats, 1929	Amount Sold $1,032,194,006	% of Total 100 %
467	Vermont	2,550,567	.25
	North Dakota	3,749,662	.36
	South Dakota	5,218,760	.51
	Kansas	11,530,940	1.12
	Delaware	1,847,667	.08
	Alabama	12,943,744	1.25
	Arkansas	9,745,637	.94
	Oklahoma	13,373,085	1.30
	Washington	13,956,531	1.35
	Montana	3,821,223	.37
	Idaho	2,821,223	.27
	New Mexico	1,991,515	.19
468	Arizona	2,463,764	.24
	Utah	3,279,275	.32
	Nevada	942,660	.01
	Florida	8,294,483	.80
	Mississippi	7,722,269	.75
	New Hampshire	465,293	.35
	South Carolina	6,515,662	.63
	West Virginia	11,899,079	1.15
	Wyoming	1,865,259	.18
	Total 21 States	130,163,897	12.42

Source: Table 6A,1929 Census of Retail Distribution, Apparel Retailing. 469

This flow of clothing from state to state and into states in which it is not produced is further evidenced by the fact that only 48% of the total sales of men's and boys' suits and overcoats were made in the seven leading clothing producing states, although these same states cut more than 90% of the total clothing cut in 1934.

Table XIV compares the percentage of garments cut in each state and the percent of the total sales of garments in these states. 470

TABLE XIV.

Comparison of percent to sales of men's and boys' overcoats and suits in 1929 with percent of clothing cut in seven leading clothing producing states

Total Sales, Men's & Boys' Suits & Overcoats, 1929	Amount Sold $1,032,194,006	% of Total 100%	% of Garments Cut
New Jersey	32,789,915	3.2	.70
New York	173,002,595	16.7	46.33
Pennsylvania	83,698,987	8.1	11.72
Illinois	90,038,936	8.7	9.12
Ohio	61,088,347	5.9	11.17
Massachusetts	42,326,620	4.1	4.07
Maryland	13,895,260	1.3	7.20
Total 7 States	$497,040,660	48.0%	90.31%

471

Source: From Table 6, 1929 Census of Retail Distribution, Apparel Retailing, and U. S. Bureau of the Census.

472

It will be noted that although 46% of the total garments cut in the country, were cut in New York State, only 16.7% of the total sales were made there.

Virginia produced $8,000,000 worth of men's clothing in 1929, but $14,000,000 worth of men's and boys' suits and overcoats were sold in the state during that year.

G. *Many Manufacturers Own Retail Outlets Located in More Than One State*

473

For decades, buyers have come to New York to compare the values offered by competing manufacturers and to buy their stock, for decades too, these same manufacturers have sent salesmen out on to the road to induce the retailer into buying. More recently, a newer method of distribution has been taking its place alongside these time-honored ones: that of direct ownership of retail outlets. The larger manufacturers are either buying into existing retail establishments, or opening their own retail outlets. One writer on the subject has this to say: "The idea of clothing manufacturers owning or having an interest in large city distributors, or vice versa is, of course, not new. John David, New York, has for severel decades been closedly related financially to Stein-Bloch, and Wallach Brothers to Hart, Schaffner & Marx. But within the last five years the tendency has been greatly intensified. Men's clothing is a business which calls peculiarly for a close relation between retailer and manufacturer if

474

the highest retailing efficiency is to be attained. This has been carried forward even in the small city field. 475
Hart, Schaffner & Marx are now reputed to own or be to some degree financially interested in as many as 400 stores throughout the country."(1) Manufacturers, when buying into existing retail stores, or opening their own, do not recognize state lines. One large manufacturer owns stores in fourteen states.

H. *Growth of Chain Stores*

The chain store method of retail distribution is 476
gaining in importance as more emphasis is being placed on good value at low prices in certain price classes and less emphasis is placed on tailoring details. The single fixed price at which many of these chains sell enables the manufacturer to produce more standardized garments in large quantities. National chains sell a substantial percentage of men's and boys' clothing.

In 1929, 286 men's wear chains operated 3,054 stores. These chains sold $271,000,000 worth of goods in 1929. 84 of these chains operating 893 stores sold only men's clothing; 9 of the 84 men's 477
clothing chains were national in scope. They had 221 units and sold 25% of the men's and boys' clothing sold in the type of store described as "men's

(1) Advertising & Selling, May 15, 1929, page 19, Paul Freeman, "Changes in the Men's Clothing Industry".

clothing stores". (1) Of the remaining 75 men's
478 ing chains, 40 were local and 35 were sectional.

I. *From the Manufacturer Direct to the Consumer, In the Same or Another State*

In the struggle to reach the customer wherever located, many manufacturers have turned to the house-to-house method of selling men's clothing. In 1929, 299 plants sold nearly $49,000,000 worth of clothing directly to household consumers. This was 5.9% of the total sales. Some firms which own their own retail outlets also sell on a house-to-house
479 basis. Although Cincinnati, for example, is in particular a center for the manufacture of clothing for sale on the house-to-house basis, much of the clothing sold by this method is sold in the West and South. The growth of this direct consumer selling is due to a greater style consciousness in smaller places, as well as to the intense competition between manufacturers to find an outlet for their product. Local stores in the small towns can carry only a relatively narrow assortment of sizes or fabrics in ready-to-wear clothes. Many consumers are therefore, glad to be able to order their clothing
480 direct from one of the large manufacturers, no matter how distant.

J. *Summary*

From this picture of the methods of selling men's clothing, it is apparent that the nation as a whole and all the states constitute the market for such

(1) 3,386 men's and boys' clothing stores sold $176,418,581 worth of merchandise in 1929; 9 national chains sold $43,749,632 worth of clothing. P. 27, Apparel Retailing, Fifteenth Census of the United States.

clothing. The potential customer for a suit of clothes manufactured in Virginia, for example, may be any one of fifteen or twenty million men living in any other of the 48 states, or the District of Columbia. 481

Mens' clothing is advertised in directories and magazines of national circulation. Every effort is made to attract purchasers, regardless of geographic location.

A variety of methods is used to dispose of the fabricated garment, but none of them observe the boundaries of states as demarcations of market areas. Many manufacturers whose garments are fabricated in other states maintain stock of goods and show rooms in New York and other market centers. Traveling salesmen cross state lines seeking customers. 482

Retail outlets are located in every state in the Union regardless of whether men's clothing is produced in the state or not. The retailer can make his selections from garments manufactured in many different states. He chooses his purchases on the basis of quality and price, rather than on locality of manufacture.

483

IV. MOBILITY IN THE MEN'S CLOTHING INDUSTRY: EFFECT ON FLOW OF COMMERCE

A. *Why Mobility is Possible*

The men's clothing industry is composed of many mobile units. This situation exists because investment in fixed capital is small and transportation costs per unit are low, in relation to value. These conditions make for great mobility of operations

without reference to state lines. The manufacturer
484 who has a fixed investment in a single city finds himself in competition with another manufacturer who examines his woolens in one state, has the individual garments which make up a suit out in a second state, and has the separate parts of the suit fabricated in other states.

1. Investment in Fixed Capital Low

A large proportion of the capital of a firm engaged in the clothing industry is in piece goods, partially finished garments, and stock, rather than in ma-
485 chinery, buildings, and other fixed capital. Thus, a substantial portion of the capital is mobile capital. It is a simple matter to load piece goods and partially finished garments on a truck and ship them from one state to another, and that is not an infrequent occurrence.

The relatively small investment in fixed capital, compared to such industries as steel, public utilities, or automobile, makes possible carrying on operations in several states or the easy migration of a manufacturing unit from one state to another.

Special buildings are not required for clothing
486 factories as they are in many other industries for the manufacturing process. An individual wishing to enter the business of fabricating men's clothing can readily rent a building which will be suitable for his purposes with few or no alterations.

No heavy machinery is required, and no large expenditures are involved in dismantling machinery in one plant and installing it in a new one, even in another state.

The Bureau of Foreign and Domestic Commerce

found as the result of an investigation in 1915(1) that the proportion of the value of product to capital invested in the men's clothing industry was $2.00 of product for each $1.00 of capital invested. The same Report stated that the iron and steel industry produced only 70c to one dollar's worth of product for every dollar of capital invested, while the average for all manufacturing industries was $1.00 to $1.50 of product for every dollar of capital. These figures indicate that the amount of capital required, in relation to value of product is, therefore, lower in the men's clothing industry than in other manufacturing industries. 487

More recent figures are available as to the relation of net sales to net worth for 229 identical concerns for the years 1932-34. Net sales were three to four times as great as net worth for these concerns during these years. 488

TABLE XV

Net worth and net sales

(229 identical concerns) 489

Year	Net Worth (a)	Net Sales
1932	$14,026,270	$40,992,104
1933	15,089,441	51,918,217
1934	15,645,815	62,799,692

(1) Bulletin of Bureau of Foreign and Domestic Commerce Misc. Series No. 34.

490 Source: Dunn and Bradstreet, Inc. "A Profit and Loss Survey of Clothing Manufacturers."

As these investigations show, the total amount of capital required in the men's clothing industry is low in relation to value of product. This fact, together with the further fact that a large proportion of even this small capital is in mobile form, facilitates migration.

2. Transportation Cost Low Percentage of Value Per Unit.

491 The mobility of the clothing industry without reference to state lines, or even regions, is further facilitated by the low transportation costs, in reference to the value of the product. Suits of clothes retailing at prices ranging from $15. to $100. weigh only four or five pounds each. Hence, the whole process of manufacturing wool into men's clothing is carried on with little reference to sources of raw material, or proximity to the ultimate consumer. Even the materials for the cheapest suit, as well as the finished garment, may be and often are, shipped thousands of miles across state lines before they
492 finally pass out of the hands of the last processer.

The cost of transportation depends on the method used. The most common methods of delivery to distant points are fast freight, Acme Fast Freight (special cars routed through more quickly), American Express, and parcel post. A $50. suit can be sent to Los Angeles from New York by parcel post for 59 cents. Parcel post shipment is, of course, used only for small, rush orders. The cost of sending a suit from New York to St. Louis by fast freight is less than ten cents.

Since the labor cost amounts to several dollars

on the average suit, while transportation cost per suit is only a matter of cents, a differential in wage 493
rates will overshadow any differential in shipping cost. Even a manufacturer whose chief markets are New England, and the Middle West, for example, rather than national will not be deterred by consideration of added transportation cost from moving from a location near these sections to one distant from them if, in the new location, by bargaining with his employees individually, rather than collectively, he can get a lower wage rate and save more than the increase in transportation costs. Neither will the cost of moving his machinery since 494
it is light, be a deterrent of any consequence.

Low transportation cost in relation to value of product is the second great factor in facilitating migration and mobility in the men's clothing industry.

B. *Chief Incentive to Migration the Search for Lower Labor Costs.*

1. Intense Competition in the Men's Clothing Industry.

The highly competitive conditions in the processing aspect of the clothing industry are indicated 495
by the fact that no single concern does more than three per cent of the total business.

In 1935 the 3,225 establishments in the industry employed 147,066 workers in March, a busy month. The largest manufacturer employed about 3,500 people and the fiftieth largest employed only 360. More than 3,000 concerns employed fewer than this number. In fact, the average for these concerns was less than 35 per establishment.

The competitive aspect of distribution has already been referred to. Suffice to say that clothing

496 sold on the Pacific Coast may be, and is, manufactured in the Atlantic Seaboard, and, in any single state in the Union, there is offered for sale clothing transported from every state where clothing is processed.

2. Extent of Migration.

The movement of the clothing industry from the major manufacturing centers to other areas has constituted the most striking economic development in the men's clothing industry during the past decade.

497 The number of wage earners in the five major centers, (New York City, Rochester, Chicago, Baltimore, and Philadelphia) declined from 97,000 in 1923 to 78,000 in 1929, while the number outside these major centers increased from 98,000 to 110,000. (See Table XVI)

TABLE XVI

Mens' clothing industry

Wage Earners for the United States, the Five Major Cities and Outside the Five Major Cities, by Census Years 1923-1929.

498

	United States	Five Major Cities (a)		Outside Five Major Cities	
			Per Cent of United States		Per Cent of United States
	Number	Number	Total	Number	Total
1923	194,820	97,066	49.8	97,754	50.2
1925	174,332	80,588	46.2	93,744	53.8
1927	186,711	82,541	44.2	104,170	55.8
1929	188,069	77,841	41.4	110,228	58.6

(a) Data are for establishments located within the city limits rather than within the respective industrial areas of New York City, Rochester, Chicago, Baltimore and Philadelphia.

Source: Census of Manufactures, 1929, Vol. II, pp. 354 and 368; Vol. III, pp. 158, 235, 378, 380, 466. Data are a combination of Census Classifications (1) "Clothing (Except Work Clothing), Men's, Youths' and Boys' Not Elsewhere Classified" and (2) "Clothing, Work (Including Sheep-Lined and Blanket-Lined Work Coats but Not Including Shirts), Men's." They do not include establishments with annual production valued at less than $5,000. 499

Other data bearing on this subject collected by the United States Bureau of the Census and recorded in the Census of Manufactures indicates clearly the extent of the movement. The number of establishments in the five major centers declined from 3,047 in 1923 to 2,542 in 1929, while the number outside these centers increased from 1,560 to 1,660. The cost of materials used in the major centers also declined, from 1925 to 1929, while the cost of materials used outside these centers increased. 500

The value of the product produced in the five leading cities decreased by more than $160,000,000 between 1923 and 1929, although the value of products produced outside these areas increased by more than $25,000,000. (1)

3. Migration has not been Toward Sources of Supply of Raw Materials. 501

The migration in the men's clothing industry has not been toward the sources of raw materials.

(1) Date in regard to number of establishments, cost of materials, and value of product, are all from United States Census of Manufactures, 1929, Volume II and III. The totals are a combination of Census Classifications (1) "Clothing (Except Work Clothing), Men's, Youth's and Boys' Not Elsewhere Classified" and (2) "Clothing, Work (Including Sheep-Lined and Blanket-Lined Work Coats but not Including Shirts), Men's". They do not include establishments with annual Production valued at less than $5,000.

502 Nearly 65% of the Men's Wear Fabrics which constitute the chief raw material in the fabrication of men's clothing is produced in the New England States. There has been no significant increase in the percentage of wage earners employed in these states during the past decade, as compared with percentages employed in other states.

The percentage of the total number of wage earners in the industry employed in Pennsylvania has increased from 9.5% in 1923 to 14.5% in 1933; in Maryland, from 5% to 8.1%; in New Jersey, from 3.6% to 7.2%; in Ohio, from 7.1% to 9.2%.
503 In Virginia, the percentage of the total number of wage earners engaged in the industry in the country has increased from 1.1% in 1923 to 1.6% in 1933.

These increases have occurred, while the number of wage-earners in the industry in New York, a state closer to the woolen center than any of these, has declined from 58,000 to 33,000, and the percentage of workers from 30% to 28%.

The movement has not been toward the raw material centers. The cost of transporting woolen cloth is so low in comparison with its value as to make nearness to the mills a minor factor, as com-
504 pared with others in the location of clothing factories.

4. Migration Has Not Been Toward Markets.

Since the market for men's clothing is national, it cannot be said that migration has taken place in order that establishments may be close to their outlets. Firms which have migrated from New York, for example, continue to maintain stocks of goods there. These firms, also, continue to send

their salesmen throughout the country, and to ship to points as distant from their new plants as they were from their original locations. The migration has, in fact, been way from the larger centers of population, which constitute the greatest markets, rather than toward them. This again, is due to the fact that delivery cost is low as compared with other costs. 505

5. Migration Has Been Toward Lower Wage Centers.

Labor cost, next to raw material costs, is the most important item in the total cost of producing men's clothing. The labor cost is from 20% to 28% of the value of the product; it is more than 40% of the value added by manufacture; and is an even greater percentage of purely manufacturing cost, approaching 75%. 506

Labor cost is also the most flexible item in total costs. The cost of materials is the largest item in total cost, being approximately 50%, but the costs of the principal materials do not vary greatly from manufacturer to manufacturer, for the same quality and type. The prices for woolens, the largest item in material costs, are quoted in trade papers and are standardized to a considerable degree during any one season. The prices are fixed in a national market and are, on the whole, highly responsive to the bargaining power of individual purchasers. 507

Other costs, such as those for power and light, needles, and interest charges, are also relatively inflexible, being either publicly regulated or fixed in a national market.

Labor cost, then remains as the large items which is subject to the manufacturer's bargaining power on a local basis. Labor cost bears a close relation

508 to wage levels and working conditions, and it is apparent that manufacturers who succeed, by individual bargaining, in lowering the standards prevailing as to these conditions, have a great advantage over the manufacturer who maintains standard conditions.

It is significant that when all elements of the industry, including the Association of which Friedman-Harry Marks was a member, met in July, 1933 to plan for recovery, the entire discussion was confined almost exclusively to provisions affecting wages and collective bargaining. Everybody recognized that that was the problem.

509 In the following table is shown the shifting of the men's clothing industry from centers where wage earners receive average hourly wage above the average wage shown for the country, to cities where wage earners received an hourly wage below that shown for the country.

TABLE XVII

The shifting of the men's clothing industry to centers of unfair competition.

510

	Average Number of Wage Earners Employed				Per Cent Change from 1923 to 1929
	1923	1925	1927	1929	
Cities in which wage earners receive an average hourly wage below the average for the country					
St. Louis	3 322	3 402	3 831	3 946	— 18.8%
Cleveland	4 636	4 474	4 501	5 646	— 21.8%
Baltimore	7 849	8 771	8 392	9 363	— 19.3%
Cities in which wage earners receive an average hourly wage above the average for the country					
New York	37 648	29 717	30 687	28 498	— 24.3%
Chicago	28 673	21 283	19 494	17 706	— 38.3%
Rochester	10 983	10 088	11 325	10 647	— 3.1
Boston	4 818	3 853	4 193	3 941	— 18.2

Sources: U. S. Census of Manufactures. 511

Further evidence of the shift to low wage centers is to be found in the increase in number of wage earners in Eastern Pennsylvania, where wages averaged 21c per hour in 1932, according to the United States Bureau of Labor Statistics,(1) while hourly earnings in Chicago, New York, and Rochester, where employment was declining, ranged from above 50c. Employment also increased in Baltimore where the average wage was 29½c an hour,(1) and where in one establishment, employing more than 500 people, average hourly earnings were only 512
20c per hour.(2)

Employment decreased in the centers where wages remained stable from 1923 to 1929, areas where wages were fixed by collective bargaining, but either increased or did not decline as much as in the areas where wages were not stable, but declined.

The clothing centers in which wages were reported to be high, in comparison with other centers in 1932, were all centers where collective bargaining was the general practice. That wages in firms where the employees bargained collectively with their employers continued to be higher than in 513
firms where individual bargaining was the rule, in 1934, was evidenced by figures prepared by the Division of Research and Planning of the NRA on wages paid by the 50 largest establishments in the clothing industry and submitted at a public hearing.(3)

(1) U. S. Bureau of Labor Statistics, Bulletin No. 594, Wages and Hours of Labor in the Men's Clothing Industry, 1932.

(2) Report of Investigation by Commissioner of Labor Statistics of Maryland, December 14, 1932.

(3) Statement submitted in support of the Amendments to the Men's Clothing Code—Proposed by the Management Members of the Code Authority.

514 The ten of these 50 largest establishments paying the lowest hourly wages, paid an average of 46c per hour. The ten paying the highest hourly wages paid an average of more than 79c per hour. The average for the 50 was 67c. From statements made at a hearing before a Senate Committee, it became public knowledge that none of the ten firms paying the lowest wages bargained collectively with its employees thru the Amalgamated Clothing Workers of America, while all but one of the ten firms paying the highest wages did engage in collective bargaining with that organization. Chart V compares these wages in graphic form.

515 For Virginia the figures show an increase in number of wage earners employed in that state during the period under discussion. In spite of a drop of one fifth in the total number of workers engaged in the industry from 1925 to 1933, in the country as a whole, the number in Virginia increased from 1707 workers in 1925 to 1936 workers in 1933, despite the depression.

The effect of the migration of shops on employment in the older clothing centers is indicated in an authoritative report of the employment exchange
516 operated in connection with the unemployment insurance fund by the Chicago Joint Board.

TABLE XVIII

517

Amount of unemployment in Chicago

Year	Daily average number of workers on register	Daily average number of jobs available	Average number of days lost by workers until permanently assigned
1923	455	47.7	17 days
1926	1,413	80	21 "
1929	1,356	16.8	243 "
1932	2,707	5.5	517 "
1933 until July 1	3,245	6.1	614 "

518

Source: Employment Exchange, Chicago Joint Board, Amalgamated Clothing Workers of America.

C. *Summary*

We have here, then, a highly competitive industry, with direct wage payments a predominant element in cost to the individual enterpreneur; an industry with little fixed capital to write off or carry along, and with transportation as a low item in cost. It is not surprising, then, that we find that migration of shops from one state to another state is a predominant characteristic of the industry.

519

From its behavior during the past decade, due to its peculiar characteristics, the industry might well be described as an industry on wheels.

The social cost in unemployment and lowered purchasing power resulting from this migration from standard to sub-standard areas has only been

hinted at. Wage rates have been depressed and the
520 flow of goods which make up the day-to-day items of consumption of the wage earner diverted. Not only clothing workers in the standard areas have been affected, but also the thousands of grocers, milkmen, and others who gain a livelihood providing goods and services for the factory wage earner.

This has occurred because wage rates for clothing workers, in sub-standard areas have continued to be fixed by individual bargaining, although practically all other prices of articles entering into the fabrication of men's clothing are fixed in a national market.

521

(Signed) HARRY K. HERWITZ

Sworn to before me this
3rd day of December, 1935.

(SEAL)

(Signed) WM. E. WIMPEY,
Notary.

William E. Wimpey,
522 Notary Public, N. Y. Co. No. 197,
Reg. No. 7-W-125. Commission
expires March 30, 1937.
Notary Public N. Y. County.

Mr. Weinberg: We move that the testi-
mony of the witness Herwitz, and the charts, 523
in whole and in part, be stricken from the record on the ground that it is irrelevant, immaterial and incompetent, and of no probative force or value; that it contains numerous alleged statements of fact, which are admittedly and confessedly not of the witness's own knowledge and, therefore, hearsay; that it is argumentative and contains improper and inadmissible conclusions of fact and of law.

Mr. Wirin: Before the Examiner rules 524
upon that may I state for the benefit of the Examiner and the record very briefly the purport of this affidavit? The affidavit by Mr. Herwitz, who qualifies as a statistician and expert in the clothing industry, pertains to the nature of the clothing industry, and is offered by him, in part, to lay the basis for the jurisdiction of the Examiner and the Board in this case because of the interstate character, as we contend, of the industry, and of the business of the company respondent in this case.

525

Trial Examiner Perring: I will overrule the motion and note an exception.

Mr. Weinberg: Now, in order to save time and the reiteration of our objections and motions we suggest that it be understood that we note the same objection to each affidavit and exhibit accompanying the affidavits that we just noted to the Herwitz affidavit and exhibits, and that we note the

same motion to strike out as to each one of
526 the affidavits and their accompanying exhibits, and the same exceptions in each instance to the Trial Examiner's rulings.

Trial Examiner Perring: Of course, if the Trial Examiner strikes out any of this testimony you will not note any exception.

Mr. Weinberg: That is correct. That will obviate the necessity of our making that statement each time you get on your feet. If that stipulation is agreed to we can proceed more rapidly.

527 Mr. Wirin: That stipulation is agreed to, and we have an additional suggestion. Perhaps it would be better not to have any ruling at this time by the Examiner as to each affidavit, but give the Examiner an opportunity to examine the affidavits, and in such report as the Examiner makes to the Board at that time he can make and enter his rulings on this offer of evidence subject to the objections and the motions to strike.

Mr. Weinberg: And to your exceptions,
528 in the event of an adverse ruling.

Mr. Weinberg: That is quite agreeable to us.

Trial Examiner Perring: I think that will be satisfactory to everybody. It will be understood that the affidavits will be given their respective exhibit numbers as they are offered and that they are to be copied into the record.

Mr. Wirin: Then I think we can move more rapidly from now on and save all of

this legal discussion, which must be a nuisance to those here who are not members of our fraternity. 529

The next exhibit in order, which will be Board's Exhibit No. 8 for identification, is an affidavit of Julius H. Levy, and we offer this in evidence, as we offer into evidence all the affidavits and documents which I shall now refer to separately but briefly, and the Examiner will rule as to their admissibility, as I understand it, under a new stipulation at the time the Examiner considers and decides this proceeding.

530

(The paper referred to was marked for identification, "Board's Exhibit No. 8.")

531

(Board's Exhibit No. 8 is as follows:)

532

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, a Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

533

AFFIDAVIT OF JULIUS H. LEVY

State of New York,
County of New York *ss.*:

JULIUS H. LEVY, being duly sworn, deposes and says: I reside at 136 East 64th Street, Borough
534 of Manhattan, New York City.

In 1892 I became associated with MEYERS & ANDREWS, manufacturers of clothing in the City of New York, in the capacity of assistant, in the manufacturing department. I continued with this firm until 1897, at which time I became associated with the firm of KAHN-DREIFUS CO. clothing manufacturers in the City of New York, in full charge of their manufacturing department until 1913, at which time I became a member of the firm,

and the firm was thereafter contiued as KAHN-DREIFUS & LEVY, until 1925. 535

During the year 1924-1925 I was President of the New York Clothing Manufacturers Exchange, Inc. in June, 1925, I became Executive Director of said Exchange, devoting my entire time to such office, and have acted in that capacity ever since, and am now the Executive Director.

As one who has had many years of experience in the Men's Clothing Industry, there can be no doubt in my mind but that the Men's Clothing Industry is an Inter-state, as contrasted to an Intra-state business. The very fact however, that there is a difference of opinion on this point, only serves to indicate 536
a failure to appreciate the full significances of the changes which have taken place in industry in general and the clothing industry in particular, over a period of years. Economic thought about clothing manufacturing changes more or less with the social changes and ideas of the people. Hence our concepts are influenced by sociological changes which in turn influence economic theory.

An historical comparison may serve to verify the points at issue here. Up to a century ago, the making of harns, cloth and clothes was carried on in the home as part of the household duties. The 537
clothing industry as such did not exist. It was not Inter-state, it was not Intra-state, nor even local. It was purely a domestic industry. Preceding the invention of the power loom, each household to a large degree manufactured its own cloth and made its own clothing. It was the common practice of the men to tend the sheep and cultivate the flax and of the women to prepare the yarns and weave the cloth. Now the transition has been made from the

handicraft system to the factory system. Clothing
538 is an outstanding example of a mass production industry and by the same token, clothing is a mass purchasing and a mass distribution industry. It is the two latter items that develop most clearly the reason why clothing is an inter-state business.

No clothing manufacturing concern could exist as an intra-state organization. The state in which it was located could not supply it with the materials which it needed to carry on its production and, with but very few and minor exceptions, could not supply it with sufficient customers to make this production profitable. Take for example a clothing manufac-
539 turer located in New York City. From 30 % to 50 % of his prime cost is for cloth—cloth made from the wool clipped from the sheeps' backs. This wool may have come from Australia or from one of our far Western States. From either of these sources, it is transported many miles, across many States' lines to a mill where it is spun into harn. This mill will probably be located in Massachusetts. Then that same yarn is taken to another mill which is located either in Massachusetts, or just as likely in Maine, in Connecticut or even in Georgia. In the latter place it is woven into cloth and after this is
540 completed, this finished fabric is brought to New York.

Take the next important item of material-linings. A rayon lining for instance may have originated in the cotton linters picked on a plantation in Texas, been carried by boat to a mill in Pennsylvania where it was converted into the rayon fibre and transported still again to Massachusetts where it was woven into fabric. Then again it was brought from Massachusetts to New York City to be used in the

finished garment. Or another type of rayon lining may have originated in the wood taken from a tree 541
which was chopped down in Canada, and converted by another process in the State of Maryland into Celanese. The thread which was used to sew the buttons on was originally flax grown in Ireland and then spun by some mill in Connecticut before being brought to New York. An elephant stamping through the African jungles, wore the tusk from which the buttons are finally cut out by a stamping machine in the United States.

Most of the sponging and shrinking— which is necessary to condition the cloth before cutting— is done in either New York or Philadelphia for those 542
manufacturers who do not operate their own sponging plant. The cloth is usually sent from the mill to the sponging plant and then re-shipped after this operation to the manufacturer wherever he may be located.

This list could be contiued indefinitely and would only serve the purpose of emphasizing how utterly dependent the clothing industry is upon inter-state commerce. This dependence is what, in our opinion, makes the clothing business an inter-state activity. The process of converting those various raw materi-
als into finished suits, pants or overcoats is but a 543
temporary halt in that procedure which brings the raw materials mentioned above into the hand of the ultimate consumer. Note this point carefully. The clothing industry was not the ultimate goal that these various raw materials were being prepared for. Its process of converting these raw materials was but a temporary halt. The manufacture of clothing does not change either the form or the appearance of the various products that are used in making a

finished garment. It combines certain goods to
544 create a product which through this combination has a greater utility to the consumer.

The price that the manufacturer pays for his raw materials is regulated by the laws of supply and demand. No matter where he is located, he would in all probability pay the same price for the same goods, plus or minus a differential for transportation cost. It is interesting to observe that although costs of similar *materials* used by various manufacturers are more or less indentical—at least the variation is negligible —the other prime cost— labor
—varies tremendously in different localities. Ad-
545 vantages in labor costs enjoyed by certain manufacturers are not due to superior knowledge, equipment or technique, but are primarily based on the payment of sub-standard wages. Hence, labor is a commodity which should be purchased under equal or like conditions, lest competition create a situation necessitating reduction in standard wages to meet sub-standard payments. This would obviously tend to decrease purchasing power and thereby have a very serious effect in slackening the flow of all kinds of goods in the marts of commerce.

546 All of the clothing produced by one manufacturer is not necessarily made on the same premises in which it is cut or if taken from the cutting room to a tailoring factory, it is not necessarily true that the factory will be located in either the same city or the same state as the cutting room. Many instances are known in which suits are cut in one state, tailored in another state and returned to the original state for assembling of the coats, pants and vests for shipment of completed suits to the retailer. There are also instances where the different parts

of a suit are well made in different states and then returned to one state for shipment as a complete suit to the retailer. There is no doubt in the writer's mind at all but that this very clearly indicates the inter-state nature of the clothing business. 547

Let us observe the many evidences of inter-state activity in the distribution of his product by the clothing manufacturer. There is probably not a manufacturer in this country who sells his entire output to customers in the same state in which he is located. Even if he were located in New York City, it is reasonable to suppose that some of his output would be sold to retailers in nearby New Jersey, which represents a part of the metropolitan area. Hence, we can correctly assume that his distribution efforts are directed not only toward his home state but toward every state in the union and this New York manufacturer may be sending his salemen as far West as California, as far South as Texas and as far North as Maine. 548

Furthermore, this manufacturer may be maintaining a supplementary stock of finished goods for his customers located on the Pacific Coast and therefore be doing business in San Francisco or Los Angeles or Portland just the same as he is doing it in New York. The proof that he is doing business in any one of these places is readily proven by the fact that he is paying taxes on the stock that he carries in these distant points and in all probability likewise pays another license tax for the purpose of doing business in a foreign state. 549

Another phase of the inter-state nature of the distribution of clothing that may be cited is a situaton where the manufacturer owns or controls groups of retail stores located in states other than the one

in which the clothing is made. The manufacturer
550 of the suits or coats, as the case may be, is but a part of the activities of this particular type of business which does not complete its full function until the suits are on the racks of the retail store and sold to the consumer.

In this process, which may have taken a full year, the wool which has come from the sheeps' backs to be eventually placed on the consumer's back has travelled thousands of miles across state boundaries, even international boundaries, has been forwarded on its way by every conceivable type of transportation which was aided by various forms of communi-
551 cation, all of which were inter-state in their nature. These processes which gave greater utility to the raw material in its present stage only temporarily interrupted its course to the final goal. It stopped in its course several times but only long enough to have value added to it by certain processes or combinations with other material.

State lines are obviously then disregarded or forgotten in the accumulation of raw materials, in the manufacture of the finished product, and in the distribution of the latter to the consumer. Thus we arrive at the inescapable conclusion that the manu-
552 facture of clothing is an inter-state industry.

JULIUS H. LEVY

Sworn to before me this
2nd day of December, 1935

JACK ZEIDEN
SEAL

Mr. Wirin: Our next proposed exhibit to be marked Board's Exhibit No. 9 for identification is an affidavit of Sidney Hillman. 553

(The paper referred to was marked for identification "Board's Exhibit No. 9.")

(Board's Exhibit No. 9 is as follows:)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

554

FIFTH REGION

In the Matter of

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, A Corporation

and

AMALGAMATED CLOTHING WORKERS OF AMERICA

555

State of New York
City of New York
County of New York *ss.*:

SIDNEY HILLMAN, being duly sworn, deposes and says:

I am the President of the Amalgamated Clothing Workers of America, an international labor union

of workers engaged in the making of men's clothing,
556 and have held that office ever since the inception of the organization in 1914. I was one of the founders of, and have been a Director of the Amalgamated Trust and Savings Bank of Chicago since 1922, and was a founder of and have been a Director of the Amalgamated Bank of New York since 1923.

I am forty-eight years of age. For the past 27 years I have been associated with the men's clothing industry in various capacities.

I am familiar with collective bargaining in industry generally in the United States, and with its growth and practice in the men's clothing industry
557 in particular. Collective bargaining is designed to give labor equality of bargaining power with that of the employer. In modern industry, the theoretic right of individual bargaining by the worker respecting his wages, hours of labor, and general conditions of employment with his corporate or large scale employer is meaningless and destructive of the principle of freedom of contract, which presupposes a meeting of the minds of equals. In practice, the theoretic right of the worker results in his accepting, helplessly, whatever terms are imposed by the em-
558 ployer. The growth and development of the institution of collective bargaining through responsible and authorized representatives of organized labor, is labor's counterpart to the growth and development of modern industry and corporate wealth.

On June 20, 1933, with the adoption of the National Industrial Recovery Act, I was appointed a member of the Labor Advisory Board by Secretary of Labor Frances Perkins, and was reappointed to that Board on August 2nd, 1935. I likewise served as Labor Representative on the Code Authorities of

the Men's Clothing and the Cotton Garment Industries by appointment of the N. R. A. Administrator. 559
During the early period of N. R. A., I also represented the Labor Advisory Board at a great number of hearings and conferences held to determine labor policy and formulate code provisions.

When the N. R. A. Administrator, Hugh S. Johnson resigned in September 1934, and the President of the United States, the Honorable Franklin D. Roosevelt, created the National Industrial Recovery Board of five members as the supreme administrative body in charge of the N. R. A., he appointed me as one of the five members. I continued as a member of that Board until it was terminated on 560
June 15, 1935, at which time I received the following letter from the President:—

"June 17, 1935

"My dear Mr. Hillman:

"The reorganization of the National Recovery Administration, which has just been effected, brings to a conclusion your long and faithful public service aiding in the administration of Title I of the National Industrial 561
Recovery Act.

"As you know, I should have been pleased had you felt able to continue to serve in at least an advisory capacity in the National Recovery Administration. But I recognize that you have given so generously of your time in public service that you feel obligated now to devote yourself primarily to your duties as President of the Amalgamated Clothing Workers of America.

"It is fitting at this time and it gives me great
562 pleasure to point out that your diligent work and wise counsel as a member of the National Industrial Recovery Board, has been an exceptionally valuable service, not only to the interests of labor, but to the general public interest and a service to me, which I deeply appreciate.

"Very sincerely yours,

"Franklin D. Roosevelt

"Honorable Sidney Hillman
563 "Washington, D. C."

Shortly thereafter, on August 1st, 1935, the President of the United States once more called upon me, this time appointing me a member of the Advisory Committee of the National Youth Aministration.

My experience with collective bargaining in American industry is of many years standing. It began when I was selected in 1911 as Chief Deputy of the employees of the Hart Schaffner and Marx clothing firm in Chicago, where I was then employed as a cutter. Under a collective agreement between
564 Hart, Schaffner and Marx and the union representing the employees, provision was made for the amicable adjustments of all disputes through collective bargaining. Since 1914, as I stated above, I have been the President of the Amalgamated Clothing Workers of America, the collective bargaining agency of the organized workers in the men's clothing industry.

As a result of this life-long work in and with the men's and boys' clothing industry and my more

recent work with the Government of the United States, I am fully familiar with the history of the clothing industry, its present status, its national character and ramifications, and the situation of the workers engaged in the industry, as well as with industrial and economic conditions generally throughout the nation. 565

This affidavit is made in support of the complaint against the Friedman-Harry Marks Clothing Co., Incorporated, for violation of the National Labor Relations Act.

So that this Honorable Board may see at a glance the facts to be presented in this affidavit, I have summarized them at the outset: 566

1. The Amalgamated Clothing Workers of America is a labor union of more than 125,000 workers in the men's clothing industry, organized in locals, with democratic control vested in the members. While locals have autonomy and self-government, general policies are determined on a national basis because of the national character of the industry. A national labor organization is the only collective bargaining unit that can be effective in the men's clothing industry.

567

2. The men's clothing industry is national in scope, and its members are clearly engaged in interstate commerce. It is an integrated process beginning with the shipment of wool in interstate commerce to woolen mills in New England to be manufactured into "men's wear fabrics", and continuing with the sponging of the cloth, its cutting, its carting, its sewing, its assembling, its recarting, its distribution to local stores and its sale to the cus-

tomers, and it comes to rest in no State until the
568 process is entirely complete.

3. The men's clothing industry is a paradox of large scale industrial production and the prevalence of the sweatshop. The industry has advanced a great distance from the time when Alexander Hamilton reported to Congress in 1791 that most clothing was made in the home by the very people that wore it. There are today some 3,225 men's clothing establishments employing about 150,000 workers. The existence of many small shops and of contract-shops, however, has continued the sweatshop and all its
569 evils in the industry wherever the workers are not organized in the Amalgamated Clothing Workers and do not have the right of collective bargaining.

4. The Amalgamated Clothing Workers of America has been successful in materially improving the conditions of its members and of the industry itself. It has established peace and order in the industry in place of industrial strife. It has also instituted a system of unemployment insurance for its members, established banks where clothing workers and even clothing manufacturers may obtain credit, and
570 has built cooperative houses to bring relief to the workers from the slums and their detrimental consequences to life and health.

5. The discrimination by employers against their employees for joining the Amalgamated Clothing Workers of America and the refusal of the employers to bargain collectively with their employees through the Amalgamated, as the employees' representative, leads to strikes and lockouts. These

strikes and lockouts seriously curtail the production of garments and the continual shipments in interstate commerce of these garments during the process of production. The net effect of unfair labor practices by employers in the men's clothing industry is, therefore, to interfere with, obstruct and burden interstate commerce, with resultant economic losses to the clothing industry, to the workers, and to industry generally. 571

6. The respondent Friedman-Harry Marks Clothing Co., Incorporated has engaged in unfair labor practices in violation of the National Labor Relations Act. It has spied on union activities, thus interfering with employees in their free choice of representatives for collective bargaining. It has discriminated against union employees, members of the Amalgamated Clothing Workers of America, by lay-offs and discharges. 572

I.

The Amalgamated Clothing Workers of America; Its Organization and Structure; The Democracy of the Workers In the Clothing Industry. 573

The Amalgamated Clothing Workers of America is a labor union, consisting of over 125,000 men and women engaged in the men's and boys' clothing industry. These members are organized in local unions throughout the United States and Canada. The organization is affiliated with the American Federation of Labor.

The Amalgamated Clothing Workers is organized

in a manner which gives the workers full democratic
574 control and local autonomy. While adhering to general policies having a national industrial point of view, the workers of different markets and localities are permitted to shape and fashion tactics and policies suitable to local conditions.

The local unions of the Amalgamated Clothing Workers extend from as far north as Montreal down to Georgia and Tennessee, and from New York to California— in fact, most everywhere the men's clothing industry is to be found. In important industrial cities and areas, where there is more than one local union, the locals are further organized into
575 "joint boards". All locals and other subdivisions of the Amalgamated Clothing Workers of America are governed by their own by-laws, elect their own officers and manage their own affairs, subject to the general jurisdiction of the national organization which is exercised through a General President, a General Secretary-Treasurer, and a General Executive Board, consisting of fifteen members, including the two general officers. The supreme governmental authority of the organization is vested in the biennial convention to which delegates are elected by all the local unions on the basis of membership.

576 It must be stated at this point that as a matter of economic fact, the Amalgamated Clothing Workers of America does not and cannot regard the modern clothing industry as organized on the basis of the shop unit. It cannot confine its activities and interests to the wages, hours, and working conditions of its members. It must be interested in the conditions of employment of non-union members in the industry, as well as those of its own members, because of the influence of

one upon the other. Economic organization in the men's clothing industry today is not based on 577
the single shop, and everyone engaged in the industry is, therefore, affected by wages, hours, and conditions in non-union establishments. Wages may be increased, hours shortened, conditions of labor improved, and collective bargaining maintained only if union conditions prevail not in a single factory or shop, but generally throughout the clothing industry. This doesn't necessarily mean a closed shop.

So far is the national character of the industry taken into account by the Amalgamated, that even 578
if it were possible for an organized market to get the greater portion of the men's clothing business by arrangements between the local union and the employers to lower prices this would not be permitted by the national organization of the Amalgamated, because it would adversely affect the workers and employers in other markets. On the other hand, if, because a particular market is well-organized, the local union would be in a position and would seek to impose onerous conditions on the local manufacturers which would adversely affect them in competing with manufacturers of 579
other markets, it would likewise not be permitted by the Amalgamated National organization. The Amalgamated seeks to maintain national standards and equal conditions so that manufacturers in one locality may not have unfair competitive advantages over the manufacturers in another locality.

The Amalgamated Clothing Workers of America is the authorized representative of the workers in the men's clothing industry and has been such for over twenty years.

II.

580

The Clothing Industry is National In Scope; Its Members Are Clearly Engaged in Interstate Commerce.

The men's clothing industry is an important national industry. The value of its annual product amounts to over one billion dollars. It is among the first twenty of the manufacturing industries of the nation in the number of workers it employs. It has grown from a handicraft trade to a vast national industrial enterprise. Its factories and
581 shops are distributed throughout the country.

In 1923 the value of the product of the industry amounted to more than one billion dollars, which was 1.7% of the value of the products of all manufacturing industries of the United States. The cost of materials used in the manufacture of the product for that year amounted to $484,000,000. There were employed in the industry during that year approximately 158,000 persons and the wage bill amounted to $207,000,000.

Even after the depression set in, the Biennial
582 Census of Manufactures for 1931 showed that the industry employed 121,964 persons in 2,945 establishments, with a product valued at $551,416,393. Only 15 of the more than 300 manufacturing industries listed in this Census employed more workers than the men's clothing industry, and the value of the products of only 18 of these industries amounted to more than that of this industry.

The total retail sales of men's and boys' clothing in the United States in 1929 exceeded a billion

dollars. There are more than 3000 stores in the country that sell only men's and boys' clothing. 583
Another 14,000 stores sell men's clothing and furnishings. Clothing is also sold in 11,000 custom tailoring establishments; 10,000 family clothing stores; and in thousands of department, dry-goods and general stores throughout the nation.

The manufacture of men's, youths' and boys' clothing in the United States today knows no State boundaries.

As I shall hereafter show by detailed facts, the men's clothing industry begins with the shipment of wool from foreign countries or from the Western 584
States to the woolen mills of New England to be processed into men's wear fabrics. The fabrics are then sent in interstate commerce to the principal sponging plants, which are located in New York and Philadelphia. They are then frequently cut in one State and sewed in another. In fact the trousers of a suit of clothes may be made in one State, the vest of the same in another, and the coat in still a third State. The clothes are then distributed through thousands of sales offices to men's and boys' clothing stores, furnishing stores, and department stores throughout the country. The 585
production of the garment does not end until the suit has been bought by a customer in a retail store, fitted for him, and altered when necessary, by the bushelmen in the store. Throughout that time, the product of the industry, in various stages of completion, is passing back and forth in interstate commerce, and does not rest in any one State until it reaches the ultimate consumer.

There are several phases or steps in the produc-

tion of men's clothing all of which are part and
586 parcel of the men's clothing industry. The first of these is the weaving of woolens. Those woolens which are used in the making of men's clothes are not finished cloths or piece goods such as are usually sold in dry-goods stores or department stores. The wool itself is imported from foreign countries (one-third of the wool used) or is produced chiefly in Texas and the Rocky Mountain and Pacific regions of the United States. (See also, Statistical abstract of the U. S., 1934, p. 593; U. S. Census of Manufactures, 1929, p. 417).

587 The woolens are manufactured specifically as "Men's Wear Fabrics." They are so differentiated in the Census of Manufactures of the United States Department of Commerce. Several factories which manufacture men's clothing manufacture their own woolens. The great majority of clothing manufacturers purchase woolens from the large woolen mills, which are located chiefly in the New England States. From there they are shipped in interstate commerce to the various clothing factories in New York City, Chicago, Rochester, Philadelphia, Baltimore, Virginia and other parts of the
588 country.

The next step in the making of men's clothing is a further processing of the cloth, known as sponging or shrinking. This operation is performed after the clothing manufacturer has purchased the cloth and at his expense. It may be done either in his own plant or in an independent sponging and shrinking establishment. Most of the sponging and shrinking plants are located in New York City and Philadelphia where not part of an inside plant.

The respondent Friedman-Harry Marks Clothing Co. Incorporated buys its woolens at the mills, 589
ships them to be sponged in New York City, and then takes them from New York City to the factory at Richmond, Virginia, for fabrication into garments.

After sponging, the cloth must be cut, according to patterns, preparatory to sewing. The cutting is usually done in the large industrial centers, such as New York, Chicago, Philadelphia and Baltimore and in some cases the cut goods are then sent to other states to be sewed into garments. This is always the situation with the contractor-manufac- 590
turer, whom I shall discuss below. He purchases the cloth, sponges it, cuts it on his premises, and then sends it to contract shops for fabrication, which shop may be located in another State.

In addition, other ingredients of a garment, such as thread, buttons, shoulder pads and canvas fronts, are manufactured in various parts of the country and shipped in interstate commerce to the shops or factories where the garments are sewn.

The production of a man's suit of clothes or coat is a process which is not completed in any one State. It commences in one, part of its work is done in 591
another; another part in still another State; the process continuing and the product going through many States before the garment is in its finished form for sale by the retailer to the consumer.

In New York market, 75% of the goods cut are sent out to contract shops to be sewed. Thus, New York clothing manufacturers have their garments sewed in shops located in Pennsylvania, New Jersey, Connecticut, Maryland, Massachusetts, Maine

and North Carolina. Manufacturers of Boston
592 send their garments for sewing in Delaware, Pennsylvania and Virginia, and so forth.

After the garment has been sewn and pressed, it is ready for sale. But sales are not made from the shops or factories where the garments were finally completed, to a local market. It is a common practice for clothing firms located or employing various contract shops in various parts of the country to maintain showrooms and sales offices in New York. At these offices, the clothing firms take orders for suits and coats, on the basis of which the garments
593 are manufactured in the different shops and factories located in other States. From these offices also they send out salesmen all over the United States to sell the clothing to be made up later or already made up.

A list of men's clothing firms with New York City offices, showrooms and sales establishments, which have their garments sewn outside New York State, as prepared by the N. R. A. Division of Review in its study of the Men's Clothing Industry, is annexed hereto as Exhibit 1. This list covers 68 firms, including practically all of the largest
594 firms in the industry.

As will be noted from this list, the respondent, Friedman-Harry Marks Clothing Co., Incorporated, is one of these firms. Its sales offices and showrooms are located at 915 Broadway, New York City, while its manufacturing establishment is located at Richmond, Virginia.

Many manufacturers have their own retail outlets, generally in States different from those in which their factories are located and distributed

in many States. A list of some of these manufacturers, giving the locations of their manufacturing 595
plants and of their retail stores, as compiled by the N. R. A. Division of Review, is annexed to this affidavit as Exhibit 2. The location of the retail outlets of these manufacturers shows that they manufacture for sale in States other than those in which the garments are produced. A complete list of these manufacturers-distributors would show an impressive proportion of the industry as having such retail outlet stores.

The fact that so many of the large clothing manufacturers have their own wholesale and retail out- 596
lets shows, furthermore, that the distribution and sale of the clothing is an integral part of the industry. Incidentally, retail stores selling men's clothing ordinarily have in their employ clothing workers, known as bushelmen, who perform the final operations and alterations in making the garments ready for wear in accordance with the needs of the customer.

It is also a common practice in the men's clothing industry for large firms to advertise on a national or on an interstate basis. Frequently the manufacturing firm aids retailers in merchandising the 597
product by cooperating with them in advertising campaigns, showing the close relationship and inter-connection between the retailing and fabricating phases of the industry. About 25% to 30% of the products of the industry have trademarks registered in the United States Patent Office. Two tables prepared by the N. R. A. Division of Review, which I am annexing to this affidavit as Exhibits 3 and 4, show the national magazine advertising by eleven

selected clothing manufacturers and the newspaper
598 advertising by two leading firms in States other than those in which their manufacturing establishments are located.

Even the actual sale of the finished garment to the ultimate consumer frequently involves interstate commerce. Of the 14,000 men's clothing and furnishing stores in the country, 72% are located in cities of more than 30,000 population. Since these cities contain less than 39% of the total population of the country, it is clear that buyers come in from wide areas to purchase clothing, and un-
599 doubtedly frequently cross State lines. For example, it is the usual practice for persons from parts of New Jersey, Connecticut and other nearby States to come to New York to buy clothes at such well known stores as Weber and Heilbronner, Rogers Peet, Finchleys, and Broadstreets. Similarly, residents of Camden, New Jersey, and its vicinity, go to Philadelphia to buy clothing.

The foregoing facts show that the clothing industry is an integrated process coming to rest in no State until it reaches the ultimate consumer. It is set in motion with the acquisition of wool to be
600 made into men's wear fabrics, and continues with the sponging of the cloth, its cutting, its carting, its sewing, its assembling, its recarting, its distribution to local stores and its sale to the consumer.

III.

The Men's Clothing Industry—A Paradox of Large Scale Industrial Production and The Sweatshop.

The men's clothing industry is a paradox of large scale production and the sweatshop. It has moved 601
a great distance from the days immediately after the adoption of the constitution, when Alexander Hamilton reported on the clothing industry to Congress. In his "Report on Manufacturers", in 1791, Hamilton stated: "It is computed in a number of districts that two-thirds, three-fourths and even four-fifths of all the clothing of the inhabitants are made by themselves". (Hamilton, Alexander, "Works", Vol. I, p. 211). The custom tailors that did exist worked only on order and the garments they made were expensive, so that only the rich could afford them. 602

There were in 1927, 4,118 men's clothing establishments of these, 14 employed a thousand or more workers, and 110 employed 300 or more workers. The rest were smaller shops scattered throughout the country. (See Biennial Census of Manufacturers, 1927, U. S. Department of Commerce).

Ready-made clothing did not appear in this country until about 1825. And then it was only because of two circumstances—first, the custom tailor often had left on his hands garments rejected for some reason by the persons for whom made, and they had 603
to be disposed of at lower prices to anyone who would take them; secondly, the seasonal nature of the trade resulted in unemployment for a great portion of each year, and the tailor sought to keep his employees busy during slack seasons. A demand for ready-made garments soon developed, however, as travel increased with the newly-built canals, roads, and railroads. Clothing factories arose in the 1830's but they were hardly factories as judged by present standards. The factory owner merely

designed and cut the garments, and then gave out
604 the cut materials to be sewed at home, the cheaper grades by farmer's wives and the better grades by the skilled city tailors. In this manner, the sweatshop system originated. Since the meagre pay received for such home work did not provide enough to support the worker's family, even by long hours of toil, it was usual for the entire family to assist him at his tasks.

The invention of the sewing machine about 1850 and a decrease in the price of mill-manufactured woolen clothes at about the same time provided the stimulus for large-scale production of clothing and
605 for the true development of the factory system in the men's clothing industry. This step was materially advanced by the Civil War, which created a great demand for uniforms. In measuring soldiers for uniforms, it was discovered that there was a close relationship between the sizes, of the different parts of the male figure. With a set of standard sizes, ready-made garments could be turned out in mass quantities, and factory production increased.

Other inventions that greatly increased the output of the modern clothing factory and simplied the
606 task of the garment workers were: the cutting machine, first brought forth about 1872 and perfected from time to time since then: the pressing machine; and machines for button-hole-making, pocket-making, button-sewing, clothing examining, and sponging.

Although these inventions have made the men's clothing industry one of large-scale production, the industry lags behind other manufacturing industries in the size of its units.

The Census for 1925, shows (as will be seen from the table annexed to this affidavit as Exhibit 5), 607
that in that year, while in all manufacturing industries, factories with an annual output of $500,000 or more employed 70.3% of the wage-earners, the same class of factories in the men's clothing industry employed only 54.8%. Similarly, in the men's clothing industry 17.4% of the wage-earners are employed in factories with an annual output of less than $100,000, while in all manufacturing industries, the percentage is only 9.8%. The census also shows that as far as value of the product is concerned, men's clothing factories with an annual
output of $500,000. or more produced 64.3% of the 608
total output, while in all manufacturing industries the value of the output of the same class of factories was 77.5% of the total.

These figures do not tell the whole story. A great number of establishments are so small as to be almost beyond control in any well regulated policy setting up standards in the industry. These small units constitute a distinct problem to the industry as well as to the workers which can be dealt with only through the Amalgamated Clothing Workers of America, the organization of labor in the industry on a national scale. 609

The reasons for this predominance of medium-size and small-size factories in the men's clothing industry are:

(1) The absence of overhead expenses, and the fact that the small manufacturer pays personal attention to the business frequently puts him in a position to undersell a larger manufacturer. The

610 capital investment necessary to set up a clothing shop or factory is very small as compared with other industries. Almost any loft, storeroom, or even a flat in a tenement house can be used for such a shop or factory. Expensive machinery is unnecessary, and the few machines that are needed can be obtained on easy terms, usually second-hand, or may even be rented, with the result that the machinery used in the largest and most successful clothing factories in the United States may be found in any average-sized shop. Moreover, in contract shops, or about one-third of the industry, the materials are supplied by the manufacturer, so that
611 the contractor, who is the shop or factory owner, does not even have that expense.

(2) There are no expensive patents. Any designer may produce a distinctive style that will attract customers.

(3) The industry is seasonal in nature. It has a busy summer season of three or four months, beginning in June and a busy winter season of about three or four months beginning in January, and
612 a great slack period between these seasons, during which slack many shops close down and others work with reduced forces.

The different varieties of establishments in the industry may be classified in the following five categories:

(1) *The "Inside" Manufacturer,*—Here the entire manufacturing process of the garment and its sale to retail dealers is carried out by a single firm on the firm's premises and by employees of the

firm. The term "Inside" manufacturer is generally applied to such establishments because the fabricating of the garments is done in the manufacturer's factory, and is not let out to contractors. 613

(2) *The Contract-Manufacturer*—This type of establishment purchases and sponges the cloths, and designs, cuts and sell the garments. But the actual tailoring or sewing, fitting, finishing and pressing, is let out to contractors on a piece-rate basis.

(3) *The Contract Shop*—is the complement to the Contract-Manufacturer; furnishing the labor, equipment and supervision necessary for the tailoring of garments from the cut materials furnished by the Contract-Manufacturer. 614

(4) *The Manufacturer-Distributor*—Some inside shops also control selling outlets to dispose of their products directly to the consumer.

(5) *The Special-Order Shop*—manufactures garments made to order, upon factory principles.

The prevalence of the small-size establishment and of the contract shop was responsible, before the organization of the Amalgamated and the entering into of collective agreements with contractors' associations, in a degree, for the sweatshop system in the men's clothing industry. 615

Sweatshops originated with the practice of clothing merchants of giving out material for garments to be made at the homes of the tailors. Since the work was done at home, the tailor's family would assist

him, resulting in overcrowding and in unsanitary
616 working conditions. Furthermore, low wages forced the home workers to work long hours in order to earn enough to keep body and soul together. Gradually the tailor began to take on apprentices or journeymen, assistants, and moved his shop to an empty tenement flat, or store-room or abandoned loft in an old building, where rents were cheap. An inexhaustible labor supply at low wages was afforded by the surplus of tailors, and women and children were employed for the minor tasks. The seasonal character of the trade resulted in excessively long hours, during the rush of the season,
617 and in long periods of unemployment between the seasons. The competition for work among these contractors led them to cut wages even lower, to locate their shops in the cheapest buildings obtainable, and to keep their overhead expenses at the lowest possible minimum by economizing on light and fuel, and by failing to provide the barest facilities of sanitation necessary to protect the health and morals of the employees. Workers had to submit to all these evils because the alternative was idleness and starvation.

618 These conditions led to the organization of the workers into the Amalgamated Clothing Workers of America, and after many years of struggle and effort through the institution of collective bargaining, conditions of labor improved and the sweatshop was eliminated. Only where no collective arrangements exist, is the employer in a position to impose sweatshop conditions.

The sweatshop with all of its sordidness, misery, and dangers to health and morals, existed in the men's clothing industry in the absence of union

control up to the institution of the N. R. A. Its victims were recruited from the unfortunates of all nationalities, ages, sexes and races. Young men and women became aged by few years of work in a sweatshop, and its unwholesome atmosphere robbed children of their youth and vigor. The victims of the sweatshop have crowded hospitals and sanitoriums and have taxed to their capacities charity organizations and settlement houses. 619

Moreover, the sweatshop was no longer confined to the small contract shop. The large clothing manufacturing firms, including the respondent Friedman-Harry Marks Clothing Co., Incorporated, sought to escape decent standards by removing their sewing establishments to rural areas and less important industrial centers, particularly to the Southern States. As I shall show later, labor in these areas was much cheaper, and the manufacturers set up large factories in which they introduced sweatshop conditions. 620

The labor cost is a vital factor in the manufacture of men's clothing. It represents 41.8% of the total value added to a garment by manufacture. (See "Wages and Hours of Labor in Men's Clothing Industry—1932", U. S. Bureau of Statistics Bulletin 594). Experience has shown that in this highly competitive industry, those clothing firms, which, directly or through contractors, can impose sweatshop conditions and low wages are able thereby not only to keep their own workers in miserably low circumstances, but to drag down the wage structure of the employees in organized factories and shops. The sweatshop firms constitute a serious competitive menace to the firms which, either through contractual obligation or otherwise, 621

622 pay decent wages and maintain decent standards. This is a distinctly unfair method of competition, since its basis is the extreme exploitation of Americans who are too helpless to resist and are utilized, therefore, to make already bad economic and social conditions, worse.

When the clothing workers of New York were not protected by organizations and collective bargaining their conditions of employment were pitiable, and were typical of industrial conditions existing until the institution of the N. R. A., in those centers and factories where the employers denied
623 their workers the right to join the Amalgamated Clothing Workers and to bargain collectively through representatives of their own choosing.

The clothing workers were the victims of the sweatshop during working hours and of the slum after working hours. Workers' children were born into a life of poverty and ill health. Infant mortality was high. Family life and standards of living, or, rather, of existence of these workers, became the concern of all thoughtful people, particularly of social and welfare agencies, and students of sociology, public health and economics.

624 That these conditions still prevailed up to the institution of the N. R. A. in non-union clothing establishments was amply demonstrated by the testimony given before the commission headed by Professor J. H. Hollander of Johns Hopkins University on the clothing industry of Baltimore in November and December 1932 and at a subsequent supplemental investigation made by the Commissioner of Labor Statistics of the State of Maryland.

The testimony showed that some factories were located in cellars below the street level and were

full of roaches and rats, that workers had no place to eat their lunches, except at their machines, 625
amidst dirt and filth; that in cases of illness or accident no first aid was provided; and that girls who had fainted from overwork at the machines or the lack of proper ventilation were forced to lie on the floor until they recovered sufficiently to go back to work. In such cases, the girls were seldom permitted to go home, but had to return to work on the threat of losing their jobs. The cellars are generally damp, and the girls developed rheumatism and other illnesses. Hours are as long as 64 a week for which experienced workers earn as
little as $6. and $7. a week. One employer told girls 626
working at pressing machines, a difficult and arduous task at which men are usually employed, that they couldn't go home when ill unless they had fainted five times. Another girl testified that she earned 27c for working 8 hours. Some of the verbatim testimony before these investigating bodies is set forth in Exhibit 6, annexed hereto.

Because of the peculiar features of the clothing industry, the devastating effect of the economic depression, commencing in 1929, which worked havoc with the economic and social life of the
country generally, was particularly marked in this 627
industry in the degrading and depressing of labor standards. The disintegrating process ate into the union market and union shops, and operated in various ways.

As unemployment rose sharply in the industry, the wages of those employees who were fortunate to retain their jobs were seriously impaired. The average annual earnings of workers in the men's

clothing industry declined from $1310. in 1923 to
628 $724. in 1932. Moreover, not only was there this absolute decline in wages but the wages of the workers in the men's clothing industry declined in relation to the wages paid in other industries. In 1923 the wages of clothing workers were higher than the average wages in all other industries combined, but in 1931 they were 15% lower. The effect of all of these changes on the standards of living and the purchasing power of the employees in the industry can be seen from the fact that whereas the cost of living declined 25% from 1923 to 1932, wages in the industry declined 45%.

629 Furthermore, during this period, there developed a tendency (to which respondent contributed) to remove enterprises from the large industrial centers, which they had heretofore been established, to rural areas and to smaller towns and cities. In these rural factories the wages paid were extremely low and the hours of work much higher than those prevailing in the factories in the industrial centers. Through this process, in some instances, employees were receiving for a week's work of fifty-two hours, as little as $5.00 in wages or less. It is pretty clear
630 that the effect of the establishment of these abnormally low standards of wages was to depress the wage standards which had prevailed in the established centers of the industry. This resulted moreover, in the creation of an unfair competitive advantage to the employers operating under these low standards of wages over those employers who were paying the normal wages in the industry, and resulted further in great and serious losses to the latter and the destruction in many cases of their businesses and good will which they had established

over many years and as the result of great diligence and effort. 631

All this inhuman exploitation and degradation of labor standards were made possible because, during the depression employers were able to elude better standards through the open shop market and by refusing to recognize the institution of collective bargaining. They discriminated against and discharged union labor. They spied upon the workers and refused to allow them to join the Amalgamated. They penalized them for any attempt at self-organization. And through these means and unfair practices they took advantage of the economically insecure village and small town employees. At the 632 same time they undermined the market by glutting it with clothing, the product of cheap and underpaid labor, making it impossible for other manufacturers to pay decent wages, and maintain human standards.

With the establishment of the National Industrial Recovery Act and the adoption of the Code of Fair Competition for the Men's Clothing Industry, these evil conditions which were slowly ruining the entire industry began, to an extent, to be alleviated. When, however, the NRA was declared to be invalid, and 633 the effectiveness of the code was ended, the unconscionable employers, freed once more from restraint, sought to return to the law of the jungle.

A table prepared by the Management Members of the Code Authority for the Men's Clothing Industry in 1934, entitled "Average Hourly Rate Paid to Manufacturing Employees (Excluding Off-Pressers and Cutters)", listed the average hourly rates paid to this class of employees in the fifty largest clothing establishments in the country.

634 These fifty firms were arranged by number, in order of those paying the lowest average rate and up to those paying the highest rate. The average hourly rates paid by the 10 firms paying the lowest rates and the average hourly rates paid by the 10 firms paying the highest rates were as follows:

10 Lowest		*10 Highest*	
#1	42.4c	#41	74.3c
#2	42.8c	#42	75.4c
#3	43.0c	#43	76.0c
#4	44.2c	#44	76.7c
#5	45.3c	#45	79.1c
635 #6	46.7c	#46	79.6c
#7	48.4c	#47	81.0c
#8	49.1c	#48	83.0c
#9	49.7c	#49	85.0c
#10	50.9c	#50	86.5c

The respondent firm is one of these fifty largest establishments, and was one of the ten firms paying the lowest average wage. Division Administrator M. D. Vincent testified before a Senate Committee that none of the firms numbered from 1 to 10—i.e., the ten paying the lowest average hourly rates 636 —was a party to an agreement with the Amalgamated Clothing Workers, but that all but one of the ten paying the highest rates were parties to such agreements. The ten firms paying the lowest rates among the fifty largest establishments, paid an average of 46.25c per hour. The ten firms paying the highest rates paid an average of 79.66c per hour, or 70% more per hour than was paid in the shops where the workers were not bargaining collectively with their employer through the Amalgamated Clothing Workers.

Not only are wages lower in non-union establishments, but home work, sweatshops and child 637
labor still persist where the workers are unorganized and do not have the benefits of collective bargaining through the Amalgamated.

In 1930 and 1931 inspections in Pennsylvania showed that in 10% of the homes visited in 1930, and 18.8% of the homes visited in 1931, children were working in violation of the child labor law. The men's clothing industry was one of the chief offenders. The 1932 report stated that "while in no industry was the problem of the child labor law negligible, it was most acute in the men's industry, 638
where violations of the law were found in 24% of the homes investigated." (Monthly Labor Review, U. S. Bureau of Labor Statistics, March, 1933, p. 504 ff).

Children are also employed in the non-union factories of Pennsylvania. Investigators for the Amalgamated Clothing Workers found shameful exploitation of children in that State. The State Department of Labor in its report for 1932, confirmed these findings. It reported that in that year, 153 clothing factories employed children of 14 and 15 years of age, and that more than 800 children under 16 were employed in 75 plants. 639

In one county practically one-fifth of the employees in the clothing factories visited were under 16. Wages for a full week's work varied from less than $5.00 a week for 75% of the workers, through $3.00 or less for nearly half and $2.00 a week or less for 20%. The median earnings of these 14 and 15 years old worker in the industry was $3.31 a week, ("Labor and Industry In the Depression", Bulletin 39, Penn. Department of Labor & Industry, pp. 58-59).

640 In its campaign to organize the Pennsylvania clothing workers, against terriffic odds and in the face of widespread discrimination against union labor, the Amalgamated reported to the Governor of Pennsylvania, conditions so shocking that he appointed a Commission to investigate conditions in the needle trades industry of two counties. The report of the Commission showed that wages were so low that it was impossible for the workers "to maintain a decent standard of living, and in some cases not even a subsistance". It showed further that girls under 16 years of age were required to
641 use pressing irons weighing 5 and 6 pounds during every hour of the work day, with injurious consequences to their health. Gas connections in the pressing departments were not kept in good repair, creating health and fire hazards. First aid materials, rest rooms and cots, as required by State statute, were not provided. Women worked more than 10 hours a day and 54 hours a week, fearing to report these violations of the law lest they lose their jobs. ("Labor and Industry", Commonwealth of Pennsylvania Monthly Bulletin, August, 1933).

642 Sanitary conditions where home work prevails is always bad. In 1929, the city health officer of Newark, New Jersey, reported to the Women's Bureau of the U. S. Department of Labor:

> "Whatever objections there may be to sweatshop work from a labor or economic standpoint, they are far outweighed by the extreme menace to the health of the sweatshop worker. There are few tenement buildings in point of

light, ventilation and general sanitary condition suitable for any kind of home work. The 643
average tenement rooms in large cities are overcrowded at best; they are frequently dark and nearly always unventilated and overheated. * * * The work is at the same time attractive to the sickly and diseased who are enabled to work only when their conditions permit and who find the elastic hours of sweatshop labor the only form of labor they can accomplish. * * *

The investigation of sweatshops showed that this work is carried on in places where in a 644
large majority of cases, under unsanitary conditions, there can be no doubt as to the spread of disease of one nature or another."

Special investigations in New Jersey and Pennsylvania have shown that articles were being made in homes where such diseases as measles, whooping cough, scarlet fever, influenza, tuberculosis, syphillis and gonorrhea were in existence. ("Industrial Home Work", Women's Bureau, pp. 8-9).

There can be no doubt that from this point of view alone home work is a menace not only to 645
the health of the workers but also to the public which buys the germ infested garments.

The home work system is popular with manufacturers because it relieves them of the burden of renting factory space, carrying a large overhead and the necessity of providing stable employment for a large working force. The system makes it easy to expand the labor force when there is a rush of work, without any responsibility for the workers

for the remainder of the time. The home workers
646 are generally women and children, without much industrial experience so that it is possible to obtain a very cheap labor force, as a glance at the earnings will show.

Industrial home work has been an effective means of evading social welfare and labor laws, such as the laws limiting the hours of labor for women, forbidding children below certain ages from working, and prescribing safeguards of sanitation, light, air, etc., for workers engaged in industry. This evasion results in cheap labor for the manufacturer.
647 Taking advantage of this cheap labor, the manufacturers not under collective agreement with the union and refusing to bargain collectively with their employees, are indulging in an unfair method of competition, which is not only harmful to their own employees but to the employees of the manufacturers who have been under collective agreements with the union and have bargained collectively with their employees.

I am informed by investigators for the Amalgamated that workers have been seen taking bundles of clothing from and returning them to the respond-
648 ent Friedman-Harry Marks Clothing Co., Incorporated factory, and that others with automobiles have been seen leaving the factory with bundles of cut clothing, presumably being delivered to be made up at the homes of workers.

Reports of Amalgamated investigators also disclose that the sanitary conditions in the Friedman-Harry Marks factories have been very bad. At the old Main Street building, sixteen girl workers are reported to have fainted in one day, during hot

weather. In another factory maintained by respondent, where approximately 600 people are employed, mostly women, there is only one small cot with a mattress without covering, in the back of the cloak room to take care of any illness, and there is no provision for first aid. 649

In clothing factories which are under contractual relations with the Amalgamated Clothing Workers all of these inhuman and sub-standard conditions have been eliminated. The standard collective agreement in the New York shops, for example, provides that—

> "the Employer agrees that he will not give out work to any employees to be performed in their homes." 650
>
> "It is hereby agreed that the Employer shall not employ children under the age of sixteen (16) years in any of the shops owned by him or in any of the shops in which clothing is manufactured for him."
>
> "The Employer shall maintain sanitary conditions on a par with those now obtaining in the industry in which the parties are engaged."

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In the other union markets, these basic clauses are also contained in the collective agreements entered into between the Amalgamated and the clothing manufacturers. They are strictly adhered to in union shops and factories. They are enforced throughout the nation regardless of the backwardness of any State legislation that may exist in the particular State. Thus the union manufacturer in any State under collective agreement with the

union may not take advantage of children of tender
652 years, or of the use of cheap and unsanitary quarters, or of homework, or similar devices of human exploitation, and thereby compete unfairly with his fellow manufacturers following a more enlightened labor code and living up to higher standards of labor and wages.

IV.

The Accomplishments of the Amalgamated Clothing Workers of America in Improving The Conditions of the
653 *Workers and of the Employers in The Men's Clothing Industry.*

With the organization and advent of the Amalgamated Clothing Workers of America, the disgraceful and miserable conditions of employment with their serious consequences to the future of the clothing workers and their families, have been gradually eliminated in those districts of the men's clothing industry where the workers have organized themselves into locals of the Amalgamated. Hours
654 of labor have been shortened; wages have been increased; sweatshop conditions have been practically abolished; sanitary conditions have been installed in shops and factories. Furthermore, constant strife and loss of time and money to employers as well as to workers, have been practically done away with in those shops and factories where the employers have entered into contractual relations with the Amalgamated. Machinery has been set up for the peaceful adjustment of grievances and

disputes. The employers and the employees have imposed upon themselves an industrial code, voluntarily entered into, to establish order out of chaos in the industry and to insure humane and decent working conditions, hours and wages. This has been accomplished through collective bargaining and through collective agreements. 655

Early efforts of the clothing workers to organize for the improvement of their conditions met with stubborn resistance on the part of the employers. Strikes, lockouts, assaults; arrests and injunctions were everyday affairs in the important men's clothing centers. The cost of this eternal strife was borne by both parties. Employers suffered enormous losses in business, and the employees suffered hunger and privation. 656

In 1910, Hart, Schaffner & Marx, of Chicago, the largest men's clothing firm in the country, entered into a collective agreement with its workers, who became members of the Amalgamated Clothing Workers of America on its organization, and the Hart Schaffner & Marx firm has continued contractual relations with the Amalgamated to the present time. And for these 25 years there have been no strikes or lockouts in this firm, resulting in the conservation of millions of dollars to the industry and greatly benefiting labor. 657

A few years later, clothing firms in New York City and in Chicago signed collective agreements with the Union. The Amalgamated also succeeded in unionizing clothing factories in Rochester, Baltimore, Boston, Cincinnati, Cleveland, St. Louis, and Philadelphia. Today, the Amalgamated Clothing Workers of America has collective agreements

with clothing manufacturers and contractors em-
658 ploying the greater number of the clothing workers in the United States and Canada.

The unionization of the greater portion of the industry has meant not only higher wages, shorter hours, better working conditions, and greater security for the workers. It has benefited the entire industry by decreasing, and in some places practically eliminating strikes, and in bringing peace to the employer and the employees. The Amalgamated Clothing Workers do not look with favor on strikes where they can possibly be avoided. The
659 Amalgamated's industrial policy calls for the use of the strike only as a last resort, after all other efforts to settle controversies between labor and management have failed. It realizes fully the terrific cost to the workers, to the employer, to the industry, and to the public generally resulting from such conflicts. The Union is fully aware of its responsibility for the welfare of the industry, of which it considers itself a part, and for the welfare of the workers. The attitude of the Union to the strike was set forth in an editorial in the "Advance", its official organ (issue of July 24, 1925,
660 p. 6) as follows:

> "The Amalgamated as ever stands committed to the policy of orderly and regulated adjustment of industrial disputes. If the Amalgamated had its way, none of today's strikes would see tomorrow's daybreak. If the Amalgamated had its way, every clothing worker would have now been at the bench, leaving the working out of the terms of employment and

the conditions of shop management to the authorized representatives of both sides. The union and the people for whom the union speaks, want work and agreements, not strikes, order in industry, not chaos, constitutionalized relations, not guerrilla warfare." 661

As President of the Union, I have stated its position as follows:

"* * * Those who think of our labor problems must remember that victory and defeat, as such, do not settle anything. A union may win a strike and then find out that the workers have lost the union, and, at times, lost the industry, which is equally bad. Nor is it unusual for a union to lose a strike, and for the employer to discover, when it is too late, that he has lost his business. * * * 662

"* * * A realistic attitude toward the problem of labor organizations will bear in mind that the happiest solution of almost any conflict is likely to be achieved before all resources are drawn into the fight. One is more likely to succeed in getting concessions while on speaking and bargaining terms than when these terms no longer exist. Once a fight is on, the desire to win the fight develops, even though victory may mean ultimate defeat. The realistic combatant will not disregard this human element in the situation." 663

And the Chicago Joint Board of the Amalgamated Clothing Workers, in its report on "The Clothing Workers of Chicago, 1910-1922", stated:

664 "Along with its new rights and powers, the union takes on corresponding responsibilities and obligations. The enforcement of the agreement, so far as the workers' interests are concerned, rest ultimately with the workers' organization. And the power of the organization to make such enforcement effective depends upon the degree of discipline in its ranks. The spirit of the agreement demands that while the workers' rights are to be enforced, their obligations under it shall also be observed and the power of the union shall be employed if
665 necessary to enforce this observance."

The contributions of the Amalgamated towards stabilization of production has led many employers to change their attitude of hostility to the Union and to enter into collective agreements with it. The view that agreements with labor unions do not have the same validity as commercial contracts has been proved to be false by the experience of employers with the Amalgamated Clothing Workers as with other responsible labor organizations. The National Industrial Conference Board, an em-
666 ployers' agency, has stated in its report on "Representative Experience with Trade Union Agreements in the Clothing Industries" that:

> "the decrease in the number of shop strikes has already been noted. This has bettered output through the reduction of lost time and avoidance of shop disorganization." (National Industrial Conference Board, Research Report No. 38; 1921, p. 15.)

Wherever the Amalgamated has entered into collective agreements with employers, the enforcement of their provisions has never been left to anyone of the factors in the industry which might by arbitrary power, be oppressive to the others and thus continue industrial strife. Instead, there has been set up formal machinery for the adjustment of disputes. When differences arise, the representatives of both parties get together as soon as practicable and attempt to reach an amicable settlement. In most cases, they are successful. When the dispute cannot be adjusted in this fashion, it is referred to an industrial court, or "Impartial Chairman", whose decision is final and binding on both parties. A typical provision for the adjustment of disputes through the Impartial Chairman is contained in the recent collective agreement between the New York Clothing Manufacturers Exchange and the Amalgamated Clothing Workers of America (dated July 1, 1935), Article 13 of which reads:

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> "13. Should the parties fail to agree with respect to any complaint, grievance or dispute, or with respect to any breach of this agreement, then and in that event same shall be determined by the Impartial Chairman of the New York Clothing Industry designated by the Exchange and the Union and who is hereby designated as the Arbitrator for this purpose and his decision or award shall be final, conclusive and binding on all the parties; and the parties stipulate and consent that the arbitrator may make findings, decision

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and awards, and that such findings, decision
670 and awards may be enforced by appropriate judgment thereon to be entered in a Court of law or equity."

The various decisions of the Impartial Chairman have given rise to general principles which are used in deciding subsequent disputes, so that there has been evolved through this industrial court an industrial "common law". In the administration of this court there have participated such well known public figures as Professor William Z. Ripley of Harvard University, Professor Felix
671 Frankfurter of the Harvard University Law School, and the late Louis Marshall, Professor John R. Commons of the University of Wisconsin, Dr. William M. Leiserson, Chairman of the National Mediation Board, which administrators the Railway Labor Act, President David Friday of the Michigan Agricultural College; Professor James H. Tufts, Professor H. A. Millis of the University of Chicago, Clarence Darrow, Dr. Henry Moskowitz, Dr. J. L. Magnes, new President of the Hebrew University of Jerusalem, Professor Frank
672 J. Goodnow of Johns Hopkins University, and Judge Jacob Moses, of Baltimore.

The collective agreements have been renewed from year to year or each two years, as the case may be. Experience with these agreements has taught both sides their value, and their superiority as a means of defining industrial relations and of living under them. These collective agreements were never so rigid as to prevent the necessary economic elasticity to which the industry is sub-

ject. Through wise administration and the good faith engendered by the peaceful relationship unforeseen problems are taken care of in the same manner of collective action as is employed in the making of the contracts themselves. There is full recognition that uninterrupted production and the welfare of the industry and of all the factors connected with it, including labor, are best served by the mutual respect of the rights of both parties —industry as well as labor. 673

The Amalgamated Clothing Workers of America has had, at all times, as its main purpose in regard to all its activities and in all its relations with employers, the improvement of the working and living conditions of its members and of all workers in the men's clothing industry. It has for many years been recognized as the foremost organization in the trade union movement in seeking constructive measures for the economic, social and cultural betterment of its members of all wage earners generally. 674

In pursuance of this broad policy, it was the first important labor body to work out a system of unemployment insurance. Based on contributions by the employer, and at times of the employee as well, unemployment insurance funds have been established in the principal clothing markets of the country. The sums paid out to unemployed members of the Union in Chicago from May, 1924, to November, 1932, amounted to $6,979,364. 675

In addition to the unemployment insurance funds set up by the Amalgamated, it also raised considerable funds by assessments for the relief of distress among unemployed clothing workers dur-

ing these years of depression. Through these various payments from the unemployment insurance funds and special funds, thousands of families that might have taxed relief rolls and charity organizations, were taken care of by the Union.

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The principle of unemployment insurance has since been accepted and approved by the American people through the Congress of the United States, and by various State legislatures.

To provide opportunities for clothing workers and others to obtain credit and to keep small saving deposit accounts, the Amalgamated has successfully set up and maintained banks in New York and Chicago.

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One of the chief features of the Amalgamated Banks is their small loan departments, making it possible for the wage-earner and small trader or business-man to secure a loan, at a moderate interest rate, upon the indorsement of two financially responsible persons.

The Amalgamated Bank of New York has also helped to finance co-operative housing projects of the Union.

Along with its banks, the Amalgamated Clothing Workers of America has also established credit unions for its members in New York, Rochester and Cincinnati, and co-operative investment services in New York and Chicago.

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To bring to the clothing workers and their families relief from the slums and their detrimental consequences to life and health, particularly to the health and moral upbringing of the children who have to dwell in slums, the Amalgamated Clothing Workers of America promoted one of the

largest ventures in co-operative housing under the State Housing Law of New York. It built several large apartment houses in New York City for its members and their families enabling these people to live decent lives with plenty of fresh air, light and space, in clean surroundings. The economies of construction, financing and operation of these apartment houses made it possible to rent apartments at an average rental of $11. per room, which was about $5. per room less than normally charged in similar apartments. Altogether the Amalgamated apartments house a population of over 4,000. 679

Not only have the Amalgamated apartments provided comfortable and pleasant living quarters to their tenant-owners; they have also afforded them a center for co-operative and educational activities. The tenants are benefited by co-operative groceries, fruit markets and tea rooms, by the co-operative laundry and bus services. The educational activities carried on in the buildings range from kindergartens run for the children of pre-school age to lecture forums for the discussion of current topics. Lectures, classes, discussions, music and recreational activities provide wholesome outlets for the cultural and social development of the clothing workers in the Amalgamated apartments. 680 681

These are but some of the socially beneficial activities carried on by the Amalgamated Clothing Workers of America. To detail all of them in this affidavit would be unnecessary.

The Amalgamated Clothing Workers of America has rendered important services and has greatly benefited its members, the workers in the clothing industry. By its policy, it has also benefited the

clothing industry in preventing interruption of
682 production and in contributing to the industry's stability. This has been recognized by outstanding economists and sociologists.

Professor Edwin R. A. Seligman, of the Department of Economics of Columbia University, one of the country's most prominent economists and Editor-In-Chief of the Encyclopedia of Social Science, has written of this organization:

> "I venture to state as the practically unanimous opinion of all leading economic thinkers
683 and as the well-considered judgment of the most forward-looking employers, that organizations of the type of the Amalgamated Clothing Workers have contributed not a little to the maintenance of industrial peace and to the progress and stability of American industry."

Professor William F. Ogburn of the University of Chicago, well known sociologist and one time member of the NRA Consumers Advisory Board by
684 appointment of the President of the United States, wrote:

> "The Amalgamated Clothing Workers of America has been performing a function not only useful to the industry, but also of value to the public. It has illustrated the highest type of activities of labor unions in the country."

V.

685

Employers' Discrimination Against Employees' Affiliating With The Amalgamated Clothing Workers of America And Their Refusal to Bargain Collectively Seriously Interferes With Interstate Commerce And Adversely Affects Such Commerce.

The history of the men's clothing industry is full of illustrations showing the great economic loss sustained by the industry and the serious interference with interstate commerce by reason of the refusal of employers to allow their workers to affiliate with the Amalgamated Clothing Workers of America, their attempt to discriminate against such employees and their refusal to bargain collectively with them. These economic losses and interruptions to commerce, among other ways, express themselves in strikes and lockouts. There are, of course, thousands of cases of individual discharges and dismissals for union affiliation or activity of which records are not available. There are, however, figures showing interruptions to commerce by reason of strikes and lockouts. I am annexing hereto, as Exhibit 7, a table prepared by the United States Bureau of Labor Statistics, showing the number of strikes and lockouts for the period of two years, from July, 1933, to July, 1935. While no figures are set forth of the loss of man days between July, 1933, and the end of July, 1935, I can state that they represent several million man days. Very little production was carried on

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where strikes and lockouts were in progress.
388 Usually there was industrial paralysis or very substantial crippling of production in those factories.

To give but a few illustrations: The Ohio Custom Tailoring Co., of Cincinnati produced practically no garments during the entire fall season of 1935, because of a strike of 250 workers growing out of its refusal to bargain collectively with its employees. A strike of employees of the Schoeneman Co., of Baltimore for the same reason in 1931, cut that firm's business in half for about five months. The Montgomery Clothing Co., of Kulpsville gave
389 up its entire summer season this year because it would not bargain collectively with its employees.

Frequently the strikes for collective bargaining were against inside shops or against shops where some of the work was done in inside shops and some in contract shops scattered in different States.

The effect of these decreases and cessations of production on interstate commerce, in view of the nature of the men's clothing industry as I have shown above, is clearly that of interruption and interference.

390 An enforceable obligation on the part of employers to bargain collectively with the authorized representatives of the Union would have prevented, in the main, hundreds of these strikes and lockouts and their consequent interruption of production and commerce, with its unnecessary loss to the industry and to the workers.

VI.

691

Respondent Friedman-Harry Marks Clothing Co., Incorporated, Has Violated The Provisions of The National Labor Relations Act In That It Has Discriminated Against Union Members And Has Discharged Employees For Membership In The Amalgamated Clothing Workers of America.

As more fully appears from various other affidavits submitted in support of the complaint, the respondent firm, Friedman-Harry Marks Clothing Co., Incorporated, has violated the National Labor Relations Act in many respects. It has spied at meetings of the Amalgamated Clothing Workers of America and interfered with the activities of the organization. This constitutes a direct interference with the employees' free choice of representatives for collective bargaining. Employees further have been required to sign loyalty petitions to the firm. About twenty employees were laid off for membership in the Amalgamated and six were discharged. Moreover, since the filing of the complaint in this proceeding, there have been additional discharges of union members.

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Such discriminatory discharges, and lay-offs, opposition to the union, and circulation of loyalty petitions invariably leads to resentment and unrest on the part of the employees. This resentment may be under-surface for a time, but it inevitably breaks out into strikes and stoppages. As I have shown above, such strikes and stoppages

of production directly lessen and interfere with
394 interstate commerce.

Wherefore, I respectfully pray this Honorable Board to issue an order, pursuant to Section 10, subdivision (c) of the National Labor Relations Act, requiring the respondent Friedman-Harry Marks Clothing Co., Incorporated, to cease and desist from the unfair labor practices in which it has been engaging, and requiring further, that the employees discharged for membership and activity in the Amalgamated Clothing Workers of America be reinstated with back pay.

395

Sidney Hillman

Sworn and subscribed to before me
this 30th day of November, 1935.

Sidney Benjamin

EXHIBIT I.

Source: NRA—Div. of Review The
396 Evidence Study Series #24
—Men's Clothing Industry
(Pages 39 and 40)

Firms With New York City Offices
Which Manufacture Outside New York State.

Alco Zander Co.
Anderson Kondazian Co., Inc.
Arons, Adolph & Sons

Baker Clothes, Inc.
Baltimore Clothes, Inc. 697
Bangor Clothing Mfg. Co., Inc.
Barron Anderson Co.
Block Co., The
Braeburn of Rochester
Columbia Coat Co., Inc.
Curlee Clothing Co.
Daroff, H. & Sons, Inc.
Decker, Alfred, & Cohn, Inc.
Dumont Clothes, Inc.
Eisner, Sigmund Co.
Epstein Bros. 698
Fashion Park Mfg. Corp.
Fine, Max & Co.
Finkelstein, Sam & Co.
Frankel System Clothes, Inc.
Freeman, H. & Son
Friedman-Harry Marks Clo. Co., Inc.
Goldsmith, Louis, Inc.
Goodimate Co., The
Greif, L. & Bros., Inc.
Gutman, E. & Sons, Inc.
Hammonton Park Clothes, Inc.
Hart, Schaffner & Marx 699
Hickey Freeman Co.
Jacobs Tailored Clothes
Joseph & Feiss Co., The
K. & G. Clothing Co.
Keller-Heumann-Thompson Co., Inc.
Kirschbaum, A. B., Co., Inc.
Kuppenheimer, B. & Co., Inc.
Lamm Bros.
Langrock Clo. Co.

Layman, Berkowitz & Scott, Inc.
700 Lebow Brothers
Levy Bros. & Adler Rochester, Inc.
Lieberman, Aron & Sons
Lob-Hubbart, Inc.
Maimon, B.
Makransky, S. & Son.
Middishade Co., Inc., The
Morse Leopold Co.
Padi Clothes, Inc.
Philco Clothing Co., Inc.
Pincus Brothers, Inc.
Progressive Clo. Mfg. Co.
701 Rosenthal, H. B.,—Ettlinger Co.
Schloss Bros. & Co. Inc.
Schoeneman, J., Inc.
Seinsheimer, H. A. Co., Inc.
Siegel, Jacob Co.
Silvertex Co., The
Singer & Snow Co.
Sonneborn Bros., Inc.
Sportswear, Inc.
Stein-Bloch Co.
Surrey, Robert
Toplick & Eisenberg Bros.
702 Trimount Clo. Co., Inc.
Walbrooke Clothes, Inc.
Weinberg-Schiller Co.
Weitz, S. & Co.
Wile, M. & Co.
Zeeman & Seligman

Source: Directory of New York, "Men's Wear" (Fall, 1934)

EXHIBIT 2.

703

Source: NRA—Div. of Review The Evidence Study Series #24 Men's Clothing Industry

List of 19 Manufacturers of Men's Clothing Showing Location of Retail Outlets

Manufacturer and Location	*Name of Retailer and Location*	
Jos. Levy 836 Broadway, N. Y. C.	Crawford Clothes	New York City
		704
		Brooklyn
		Jamaica
		Philadelphia
		Upper Darby
	Sanford Clothes	Brooklyn
	Powers Clothes	Jamaica
Simon Ackerman, Inc.	Simon Ackerman	Brooklyn
		Bronx 705
		Manhattan
Aplo Rochester, N. Y. 915 Broadway, N. Y. C.	Bond Stores, Inc. (Randall Clothes)	New York City Chicago
New Brunswick, N. J.	(Bond Clo. Co.)	Cleveland
		Detroit

706

Akron
Toledo
Youngstown
Columbus
Cincinnati
St. Louis
Lorain
Buffalo
Boston

707

Dayton
Newark
Washington
Minneapolis
Syracuse
Rochester

Cohen Goldman Co.
45 W. 18th St., N. Y. C. — Broadstreets — New York City

708

New Bern, N. C.
Baltimore, Md.
Syracuse, N. Y.

Brooks Bros.
345 Madison Ave.,
N. Y. C. — Brooks Bros. — New York City
Boston, Mass.
Palm Beach, Fla.
Newport, R. I.

Kahn Tailoring Co. Indianapolis	English Woolen Co. Capital Ave. & St. Clair Street	Indianapolis	709
		Cleveland	
		Detroit	
		Louisville	
		Dayton	
	N. Y. Buying Office	New York City	
Fashion Park Clo. Co.	Fashion Park Associates, Inc. (1457 Broadway, N. Y. C.)		710
	Subsidiaries:		
	Desmond's Inc.	Los Angeles	
	The Hub, Henry C. Lytton & Sons	Chicago	
	Weber & Heilbroner Inc.	New York City	
	Brokaw Bros.	New York City	
	Shulman & Co.	Norfolk, Va.	711
	B. R. Baker Co.	(Cleveland) (Toledo)	
	Doutrich & Co.	(Harrisburg) (Pottsville)	
	Croll & Keck	Reading	
	L. Strauss & Co.	Indianapolis	

712		The Metropolitan Co.	Dayton
		Chaix, Copley Co.	St. Paul
		Juster, Bros. Inc.	Minneapolis
		(Finchley)	New York City
	Foreman & Clark Mfg. Co. 28 West 23rd St. N. Y	(13 stores)	Minnesota
			Iowa
			Missouri
713			Illinois
			California
			New York City
	Linden Clo. Co. (Jos. Hilton & Sons) 35 E. Elizabeth Ave. Linden, N. J.	Jos. Hilton & Sons 129 Fulton Street	New York City
	Howard Clothes, Inc. 160 Jay St., Brooklyn, N. Y.	Howard Clothes	Boston
714			New York City
			Syracuse
			Brooklyn
			Philadelphia, Pa.
			Pittsburgh, Pa.
			Providence, R. I.
			Jersey City, N. J.

Langrock Clothing Co. New Haven, Conn.	D. T. Langrock, Inc., 268 York St.	New Haven	715
	Langrock Harvard, Inc.	Cambridge, Mass.	
		Exeter	
	The Andover Shop	Andover, N. H.	
	Langrock Princeton, Inc.	Princeton	
		Lawrenceville	
	Langrock Fine Clothes	New York City	716
	The Penn Shop	Philadelphia, Pa.	
	Langrock-Brown, Inc.	Providence	
Moe Levy & Son, Inc. 119-125 Walker St., N. Y. C. and Baltimore, Md.	Moe Levy & Son	New York City	
		Brooklyn	
		Jamaica	717
S. Mendelson Sons 6103 Euclid Ave.	Sherman Stores (25 stores)	Indiana	
		W. Virginia	
		Illinois	
		Pennsylvania	
		Ohio	
		Iowa	

718	Richman Bros. Co. 1600 E. 55th St., Cleveland, O.	(62 Stores)	Ohio
			Wisconsin
			Pennsylvania
			New York State
			Missouri
			Michigan
			Massachusetts
			Indiana
719			Illinois
			Kansas
			Nebraska
			Minnesota
			W. Virginia
			Kentucky
	Rogers Peet Co. 842 Broadway, N. Y. C.	(6 stores)	New York City
720			Boston, Mass.
	Standard Tlg. 817 Broadway, N. Y. C.	The Schwab Co. (Simon Schwab) (24 Stores) Columbus, Ga.	Albany, Ga.
			Athens, Ga.
			Atlanta, Va.
			Columbus, Ga.
			Griffin, Ga.
			La Grange, Ga.

		Macon, Ga.	
		Rome, Ga.	721
		Savannah, Ga.	
		West Point, Ga.	
		Valdosta, Ga.	
		Birmingham, Ala.	
		Detham, Ala.	
		Huntsville, Ala.	
		Montgomery, Ala.	
		Mobile, Ala.	722
		Jacksonville, Fla.	
		Orlando, Fla.	
		Pensacola, Fla.	
		Tampa, Fla.	
		Knoxville, Tenn.	
		Chattanooga, Tenn.	
		Jackson, Miss.	
Stein Bros. 149 Fifth Ave., N. Y. S. Hall-Tate, Knoxville, Tenn.	(43 stores)	New York State	723
		Vermont	
		Pennsylvania	
		North Carolina	
		Virginia	
		Tennessee	

			Delaware
724			
			Georgia
			New Jersey
			So. Carolina
			Florida
	Stetson "D" Tailors 4 N. Howard St., Baltimore, Md.	Stetson "D" Stores	Tuscaloosa, Ala.
			Berkeley, Cal.
			Atlanta, Ga.
725			Chicago
			New York City
			Chapel Hill, N. C.
			Davidson, N. C.
			Greensboro, N. C.
			Raleigh, N. C.
			Stillwater, Okla.
			Philadelphia, Pa.
726			State College, Pa.
			Lexington, Pa.
			University, Va.
	Hart-Schaffner & Marx Chicago, Ill.	Wallach Bros. 114 E. 23rd St.	New York City
			Brooklyn
			Jamaica
			Flushing
			Newark
			Trenton

Source: *Fairchild's Retail Book.*

EXHIBIT 3

727

Source: NRA—Div. of Review
The Evidence Study
Series No. 24, Men's
Clothing Industry.

TABLE XXIII

National Magazine Advertising of Selected Clothing Manufacturers

Manufacturer	Address	1929 Number of Magazines Used	1929 Cost of Space	1933 Number of Magazines Used	1933 Cost of Space
A. Nash Company	Cincinnati	1	$161,500		
Hart, Schaffner and Marx	Chicago	1	149,500		
B. Kupenheimer and Co., Inc.	Chicago	2	80,000		
Middishade Co., Inc.	Philadelphia	1	59,500	1	$17,100
Alford Decker and Cohn	Chicago	5	47,380		
Rosenberg Bros. and Company	Rochester	1	38,000		
Ed. V. Price and Co.	Chicago	3	33,600		
P. H. Davis Tailoring Co.	Cincinnati	1	20,000		
Lercy Bros. and Adler—Rochester, Inc.	New York	2	5,950	1	2,500
Hech T. Lears Clothing Co.	St. Louis	1	3,570		
American Match Pants Co.	Chicago	5	2,384	3	852

728

729

Source: *National Advertising Records, Chicago, Illinois.*

730 (a) This is not a complete list but is merely a record of the outstanding advertisers. Figures for expenditures for local advertising are not available.

EXHIBIT 4

Source: NRA—Div. of Review
The Evidence Study
Series No. 24, Men's
Clothing Industry.

TABLE XXIV

	Hart, Schaffner and Marx (Chicago)	Cleveland	2	3,775	1	904
		South Bend	1	840	..	....
		Wichita	1	1,500	..	....
731		Oakland	2	1,564	..	....
		Baltimore	..	....	2	1,792
		Boston	..	....	1	888
		Hartford	..	....	1	2,484
		New York	..	....	2	1,796
		Philadelphia	..	....	1	5,048
		Providence	..	....	1	2,508
		Syracuse	..	....	1	2,376
732		Buffalo	..	....	1	896
		Chicago	..	....	1	904
		Cincinnati	..	....	1	912
		St. Louis	..	....	1	892
		Los Angeles	..	....	1	904
		San Francisco	..	....	1	888
	Total		6	7,679	16	23,192

Newspaper Advertising of Two Leading Companies, by Cities Covered

733

Manufacturer	Cities Advertised	(1929) Number of Newspapers Used	(1929) Total Agate Lines	(1933) Number of Newspapers Used	(1933) Total Agate* Lines
Cohen, Goldman Company (N. Y. City)	Boston	..	....	1	8,036
	New York	..	....	1	20,720
	Philadelphia	..	....	1	4,040
	Chicago	..	....	1	15,232
	Pittsburgh	..	....	1	2,070
	St. Louis	..	....	1	4,040
Total		..	....	6	54,138

734

Source: Media Records, New York City.
* An agate line is one column wide and one inch deep.

EXHIBIT 5

Classification of All the Manufacturing Industries and of the Men's Clothing Industry by the Annual Value of Their Products, According to the Biennial Census of Manufacturers of 1925

735

736	Class of Establishments According to Annual Value of Products	Establishments Number	Establishments Per Cent Distribution	Wage Earners Average Number	Wage Earners Per Cent Distribution	Value of Products Amount (in Thousands of Dollars)	Value of Products Per Cent Distribution
	$5,000 to $20,000 All Manufacturing Industries	55,876	29.8	156,373	1.9	628,373	1.0
	Men's Clothing	824	20.6	5,780	3.2	9,046	0.9
737	$20,000 to $100,000 All Manufacturing Industries	68,951	36.8	660,309	7.9	3,272,196	5.2
	Men's Clothing	1,366	34.2	24,662	14.2	69,078	6.3
	$100,000 to $500,000 All Manufacturing Industries	42,209	22.5	1,675,911	20.0	9,576,090	15.3
	Men's Clothing	1,336	33.4	48,406	27.8	309,566	28.5
738	$500,000 to $1,000,000 All Manufacturing Industries	9,771	5.2	1,131,439	13.5	6,870,112	11.0
	Men's Clothing	253	6.3	22,299	12.8	175,358	16.1
	$1,000,000 and over All Manufacturing Industries	10,583	5.6	4,760,229	56.8	42,366,941	67.6
	Men's Clothing	221	5.5	73,185	42.0	324,196	48.2

EXHIBIT 6.

739

Excerpts of Testimony Before Hollander Commission And Before Commissioner Of Labor Statistics of Maryland As To Conditions of Employment in Maryland Non-Union Clothing Shops.

Some of the testimony before the Hollander Commission follows:

Mrs. V., worked in the cellar of the Industrial Building of J. Schoeneman, Inc. She testified the windows were below the level of the pavement, letting in dust and dirt, which was the air we breathed. One side of the building was a parking place for automobiles. The exhaust from these cars threw out monoxide gas and frequently during the day girls complained of the strong odor and being sick. We worked under artificial light all day. 740

"We had no provision whatsoever for our clothes. We had no rest room or no lunch room to eat the lunches we brought. Our lunches we placed on work benches where rat poison was thrown around and roaches crawled up and down continuously all day. 741

"We had a cooler in the cellar which was filled only twice a day for 150 girls. If we wanted any more water we were told to go and get it in the toilet. Under this cooler was a pan for the falling water. That water would stay there weeks at a time with paper and bastings and dust. We made frequent com-

plaints and he told me if I wanted my job
742 very badly I would keep my mouth shut.

"The cellar was very damp. Several girls complained of rheumatism. I myself the short time I was there—four weeks—complained of sore throat.

"I worked 64 hours and made $6.96 and I am considered an experienced tailoress, having learned the trade when I was a little child 7 years old.

"It was a daily occurrence for young girls to pick up an overcoat and a big rat to jump out in her face, as big as a cat. If she were to
743 scream or make any commotion, the boss would say, 'What's the matter. You think this is a picnic, I will send you home.'

"The toilets were filthy and dirty, wet paper all over the toilet seats. There was no garbage can, but in the corner a large cartox box filled with paper rubbish which wasn't cleaned sometimes for days at a time and in the corridor you would find a waste can overflowing with rubbish and the rats would dance around it continuously all day. When I picked up my
744 lunch to eat it, it was full of roaches and I was unable to eat it."

Miss B. worked on the third floor of the same establishment. She testified as follows:

"One day I asked the boss to let me go home because I had a temperature of 104 and pleurisy. He refused and told me if I went home I would lose my job. He made me stay till

5 o'clock. Another boss came around at 5 and told me I had to work till 6. I told him I, 745
couldn't because I felt so bad and must go home. He told me I must be in early next morning or I would lose my job. When I went home the doctor ordered me in bed and told me to stay home until I got further notice from him to go to work. I stayed home 3 days and they sent my sister to tell me I must be at work or I would lose my job. I went in and worked with a temperature of 100 to 102. I had to go home. The doctor told me I must go to bed and I stayed out for a couple of 746
days. They sent my sister again and told me I must come back to work.

"I heard the boss tell the pressing girls they couldn't go home unless they fainted 5 times. Some of them, when they fainted, they laid them out on the cement floors, some in the toilet and some in the hall and some right by the pressing machines. They laid some on the cot but it was filled with bed bugs. They told some they couldn't go home. They (the foremen) said it was like Atlantic City by this fan and Ocean City by that fan." 747

Miss S. worked on the same floor. She testified as follows:

"When I fainted I came to and found myself lying on the cot and my whole left shoulder was covered with bites of bed bugs. It was all welts. The girls refused to lay on the bed, they would rather lay on the floor.

"I worked 8 hours for 27c.

748 "I mashed my fingers. Although my fingers were all swollen I was made to go back to work.

"When I was in the dressing room helping a girl—when I came out, the foreman told me I was fired. He asked me what I was doing —was I on a picnic.

"I worked 4 Hoffman pressing machines."

Miss D. was another worker in this establishment. She testified as follows:

749 "I had fainted one day three times. They refused to let me go home. The first time my sister asked, but I was not allowed to go home. The first time I came to I was laying on the concrete steps. After I had fainted the second time the foreman came out and a girl followed him. He said, 'What's the matter?' She said, 'I have no work.' He said, 'As soon as Miss D. decides to go back you will have some work.' 'Tony', I said, 'I am too sick, I have to go home.' He said, 'You can't.' He pulled out his watch and looked at the time. It was a quarter to 12. He gave me until one to get back to my machine and to work. I was back at quarter to one. I had told him I would pass out again. He said, 'You are not so heavy to carry out.' When I went back to work I padded one label on a coat and fainted again. The girls carried me out and brought me to. I had asked one of the girls to go in and tell my sister to come out and go home with me. The foreman told them to tell her nothing about it and sent me home by myself."

750

Her sister, Miss D., worked on the third floor of the Industrial Building. She testified as follows: 751

"I was employed by Schoeneman for three years. During the time I worked there I fainted several times and was forced back to the machine to work. In one instance my sister fainted three time. The first time I had asked the foreman to let her go home and he told me that he positively could not let her go home. The next time she fainted the girls told me and I went out to attend her. I stayed out there about half an hour. When I came back the boss asked me why I had gone out 752 there to attend to my sister. He said to me, 'What did she faint again?' I told him 'yes'. He said that there was no reason for me to go there and keep the girls after me waiting for work. The third time when she fainted they didn't tell me anything about it. When I went over to her machine to see how she felt they told me she had gone home. I went to the boss and asked him what the idea was in not letting me know my sister had gone home. He told me that if he had let me know 753 there would have been two operators gone instead of one.

"One time during the summer we didn't have much work. I have had about three-quarters of a day's work ahead. I wanted to go home at 12 and leave the rest of the work till next morning. I asked him to let me go home at 12 and he didn't let me go. About quarter to 12 I ran a needle clear through my finger,

my finger was pinned right down to my hand.
754 I went to the dressing room looking for some one. I couldn't find anyone so I sat down on the chair and I fainted and fell off the chair. When one of the girls came in and found me she notified the woman in the office and she told her to bring me in the office. When I got to the office I fainted a second time. They washed my finger with S T 37 and put iodine on and wrapped it up and told me to go back to work. I was feeling too sick to go back to work so I asked the foreman if I could go home. He said to me, 'You couldn't get off
755 when you asked me this morning. What in the hell did you do? Have you run a needle in your finger to go home and keep that date?' He told me to go back to work. And I stayed there until 1:30.

"When I got home and went to a doctor, the doctor found some pieces of the needle broken off and still in my finger."

Mrs. S., worked both in the cellar and on the third floor of the Industrial Building. She testified as follows:

756

"I have worked for Schoeneman for the past four years.

"One hot day, with temperature outside about 102, I felt sick. I asked the superintendent to let me go home. He said, 'Do you stay out all night?' I said, 'No, I don't have time to go out overnight.' I said, ' couldn't stay in the heat.' He turned his back and walked away. The next thing I knew I was coming

to. My feet were in the toilet and my head in the corridor, lying on the dirty cot, without a 757
sheet, and the ticking was black. Oother girls were laying on the floor and girls were attending to them.

"Another day the foreman brought me a coat to fix. It was already pressed. I noticed something thick in the sleeve, I turned around and said, 'There is something in the sleeve, maybe I have found a fortune.' One of the girls said, 'Open it up.' I opened it up and found a crushed mouse. I threw it on a pile of work."

Mrs. Z., worked at the Harford Avenue Shop. 758
She testified as follows:

"Right back of where I sat was a garbage can and at times it was so full that stuff was falling on the floor. I complained of the awful odor. You had to tell them three or four times. They would say, 'We don't smell anything.' The same with stagnant water where they sponged canvas. There was a terrible odor, especially in summer. They sprinkled some kind of disinfectant but it was as bad as the 759
other smell.

"One time a girl took sick with convulsions. There was only one dressing room, back of the toilet, with only one dirty cot in it. The cot was so dirty that girls refused to lie in it. This girl was brought in at 8:30 in the morning. Mr. Raab came over and gave her some medicine. About 11 o'clock they sent for a doctor. The doctor looked like he was very

760 angry because I saw him shake his finger at them. They kept the girl there to lunch time and then the ambulance came. She was lying and shaking all the time. She was from the second floor.

"In the hot weather—summer a year ago—so many girls fainted that some were put in the dressing room and they carried the rest out in the yard and put them on boards and boxes to get air. A lot of them they made to go back to work."

761 In the investigation made in December 1932, by the Commissioner of Labor Statistics of Maryland, workers gave similarly disgraceful testimony under oath:

Miss B: "Because of conditions up there, they cut us down so we could not make a living. Sanitary conditions were terrible. We had roaches, chinches, mice, rats. When we complained they said you either had to do it or else—. When we were sick about 20 people laid on the floor, fainted in a dead faint. We asked for medical aid. You
762 had to faint five times before you could go home. Medicine was scarce, very expensive and they did not want to give it to us."

Mrs. G: "In the basement there was a dirty cement floor—the water was filthy and when I asked the foreman for water from the office he said if we did not like the water, we did not have to drink it. The bottle was dirty. Then the toilet was too dirty to go in and there was poor ventila-

tion down there. The windows were a little below the level of the street, and it was always dark and 763
hot even when the wind was blowing. Had to work under electric lights all day and when you came outside the daylight would blind you. Plenty of rats, mice, bed bugs and other vermin. Some morning we would go in and pick up a bundle of work and a rat would jump out. Told foreman and he would curse and say that's all right, what was he going to do about it. On the third floor girls fainted and laid around on cement floors. One day I burnt my arm on a pipe and I went to the office and asked the girl for something to put on the burn 764
and she said she did not have time to be bothered. I have the scar to-day. I went home and attended to it myself."

Miss M: "When I would go out in the dressing room and a girl would faint, I would stay out there and bring her to. When I came back the boss would say, 'Well, did you think about coming off your vacation?'. I used to bring a lot of girls to who fainted. He would raise cain when I came in."

765

EXHIBIT 7

766

Strikes and Lockouts in Men's Clothing Industry

Date	Beginning in Month No.	No. of Workers	No. in Progress	Total No. Workers Involved	Man-Days Idle During Month
July, 1933*	65*	56,772*			
August*	45*	86,633*			
September*	32*	67,025*			
October*	13*	9,133*			
November*	3*	251*			
December*	2*	1,615*			
January, 1934*	12*	5,089*			
767 February*	12*	6,234*			
March*	31*	17,468*			
April*	11*	14,647*			
May*	12*	5,946*			
June*	14*	7,522*			
July*	8*	2,324*			
.....					
August, 1934	3	295	4	321	2,103
September	..	....	2	105	1,683
October	4	533	5	612	4,242
November	7	702	9	810	6,420
December	1	300	4	675	7,200
January, 1935	3	104	3	104	758
768 February	4	255	6	341	1,646
March	6	1320	10	1576	9,556
April	5	571	7	1156	9,105
May	2	75	5	456	5,421
June	4	958	6	1088	5,500

* Entire clothing industry, including women's garments, shirts, millinery, etc.

Source: Monthly Labor Review, U. S. Bureau of Labor Statistics, Nov. 1933—October, 1935.

Mr. Wirin: It is further stipulated, is it not, that these papers, affidavits and documents which I am now marking for identification, shall be read into the record at the point that I mention such affidavits or documents, and become part of the record. 769

Mr. Weinberg: Yes, indeed.

Mr. Wirin: Our next affidavit is that of Dr. Henry Moskowitz, which should be marked Board's Exhibit No. 10 for identification.

(The paper referred to was marked for identification, "Board's Exhibit No. 10.") 770

(Board's Exhibit No. 10 is as follows:)

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

771

AFFIDAVIT OF DR. HENRY MOSKOWITZ

New York, *ss.*:

HENRY MOSKOWITZ being first duly sworn deposes and says:

I live in the City of New York. I now function
772 under an agreement between the Amalgamated Clothing Workers of America and the New York Clothing Manufacturers' Exchange as Impartial Chairman. I began service in the New York Clothing Market in July, 1931. I am also Impartial Chairman in the Rochester Clothing Market under an agreement between the Rochester Joint Board of the Amalgamated Clothing Workers of America and the Clothiers' Exchange of Rochester. I started as Impartial Chairman in this market in July, 1928.

Previous to my official appointment as Impartial
773 Chairman in the New York and Rochester Clothing Markets, I acted as Secretary of the Board of Arbitration in the Cloak and Suit Industry under the Protocol of Peace, a collective agreement established in 1910, as the result of a general strike. The Chairman of the Board was the Honorable Louis D. Brandeis, now an Associate Justice of the Supreme Court of the United States.

I functioned as Secretary of the Joint Board of Sanitary Control in the Cloak and Suit Industry from 1910 to 1926. This Board was established
774 under the Protocol of Peace referred to and was supported by the Union and the Manufacturers' Association. This Board was governed by representatives of the Union, the Employers' Association and the public. The purpose of the Board was to establish and enforce sanitary and safety standards in the shops. It was an experiment in industrial self-regulation which did much to do away with the physical aspects of the sweatshop.

I also served as one of three moderators in the

first general strike in New York City of the Amalgamated Clothing Workers of America in 1913. 775
As a result of this strike the first collective agreement between the Amalgamated Clothing Workers of America and the Employers' and Contractors' Associations was consummated.

From 1927 to date I have served as Impartial Chairman in the Handbag Industry in New York City. In addition I have from time to time been active as Impartial Chairman in the following industries in the City of New York: Butchers, Knit Goods, Shirt Makers, Window Cleaners, Children's Dresses, Infants' and Children's Wear, Boys' Wash 776
Suits, Leather Jackets, Dress Manufacturers, Underwear, Sportswear, Retail Hat and Furnishing Salesmen, and White Goods.

The Clothing Industry Before the Recognition of the Amalgamated Clothing Workers of America

Before collective bargaining was established in the New York market, shop strikes and lockouts were frequent. Each party to the controversy took advantage of the time when the market stiuation 777
was favorable to it, to wield the instrument of force. The workers waited for the busy season to arrive. When it started they capitalized the employers' need for labor to strike and to wrest concessions from them. The employers waited for the dull season. When it arrived it was their turn to wrest advantages from the workers, because of their need for work, to lock them out. Only when collective bargaining was accepted through Union

recognition was an essential condition of peace
778 established. The recognition of the Union made possible the Amalgamated agreements under which an instrument of peace, the Impartial machinery, was established and functioned. With this recognition of collective bargaining general strikes were eliminated and stoppages in individual shops reduced to a negligible minimum. This conclusion applies to a very large extent to the Chicago market, as well as other markets in the Clothing Industry. It is confirmed by the following authoritative statements:

779 *According to the U. S. Bureau of Labor Statistics Bulletin* 198, *page* 12.

> "In the case of the industrial group represented by the Hart, Schaffner & Marx Co., there can be no doubt that the new system, mediation and arbitration, has greatly benefited both parties operating under the labor agreement. The corporation has benefited not only through the elimination of shop strikes—phenomena especially harmful and frequent in seasonal industries under the old order—but
780 also through increased efficiency in production."

Research Report No. 38, *National Industrial Conference Board, page* 31, *discussing experience of Chicago firms with Union states:*

> "The N. I. C. B. has also received returns from representatives of three large firms, (in

Chicago), employing in the busy season 6,000 people. Two of them describe their experience 781
under agreements as 'generally satisfactory' while the third says, 'it has carried us through a most difficult period without strikes . . . "

"One (correspondent) reports that his firm has had six brief stoppages but says: 'We do not regard stoppages as strikes, and though they are breaches of the agreement, they are always rigorously combated by union officials and are not very serious.' "

The NICB report states on page 32 that in New York 782

"Down to 1913 only a comparatively small fraction of the clothing workers were organized. Shop strikes were frequent and from time to time there were more extended disturbances . . . "

The same report states, page 42, that in Baltimore

"Previous to conclusions of the agreements, trouble over changes in production methods 783
which often led to shop stoppages had also been encountered, the workers being fearful of losing the advantage of their skill under the old methods, and hence their earning power. The clause in the agreements dealing with this feature, as administered by Trade Board and shop chairmen, was reported by Judge Moses to have reduced such difficulties."

Francis J. Haas, in SHOP COLLECTIVE BARGAINING, Pages 9, 10, and 11 makes the following statements:

784 "... the United Garment Workers launched a national campaign to organize the men's garment industry (in 1913). At the 1914 National Convention, President Rickert reported: 'We have engaged in 92 strikes during the past two years, and were successful in all but 24.' The cities chiefly affected by the activities of the United Garment Workers in 1913 were New York, Rochester, Boston, and Chicago." ... "The movement had its inception in New York City ... A strike referendum was taken by the United Garment Workers Officials, and on December 30, 1912, 785 50,000 men's clothing workers left their places. The number soon grew to 110,000. After a three months struggle five collective agreements and many independent agreements with individual firms were signed ... The struggle in New York City in 1913 also extended to Boston. Two causes are given for the Boston general strike which involved 5,000 workers."

On page 24, Francis J. Haas, discussing the organization of Chicago, states:

786 "Returning to the Chicago district, it is seen that after an unsuccessful general strike in 1915, and a series of strikes against the largest houses in 1919 (exclusive of the one whose agreement was reviewed above) a market contract was drawn up with 87 firms ..."

In my career as mediator and arbitrator in industrial disputes extending over a period of

more than twenty-five years, I have rendered 857 written decisions, exclusive of the large number 787
of oral decisions incident to mediation as distinct from arbitration of industrial disputes.

As Impartial Chairman I function under a collective agreement in the New York City market which provides in Sections Eight and Nine as follows:

> "All question or dispute between the parties hereto arising under, out of, or in connection with, or in relation to this agreement, shall be determined by the Impartial Chairman of 788
> the New York Clothing Industry, who is hereby designated as the Arbitrator for this purpose and his decision shall be final, conclusive and binding on all the parties.
>
> "Stoppages under this agreement are prohibited. If such occur, the Arbitrator shall have the power to impose appropriate discipline."

The Impartial machinery under Amalgamated agreements usually operates in the following manner. In the first instance all grievances are ad- 789
justed through the efforts of the shop chairman in the factory. If he fails, the representatives of the workers through the business agent, and of the employers, through their industrial relation managers try to adjust the dispute. Whey they fail the case is referred to the Impartial Chairman for final and binding decision. The vast majority of controversies are settled through the mediating efforts of the representatives of the organized

employers and organized labor. Only a very small
790 proportion of the grievances arising in the course of the industry are decided by the Impartial Chairman.

I desire to point out that the Labor Department of the New York Clothing Exchange began functioning, in cooperation with the New York Joint Board of the Amalgamated Clothing Workers of America, about the middle of July, 1924. Careful records of all adjustments have been kept in the office of the Exchange since August, 1924, and in the eleven years and three months which
791 have elapsed since that date, the New York Clothing Manufacturers' Exchange has handled jointly with the Amalgamated Clothing Workers of America, a total of 21,193 individual complaints and disputes. In the great majority of the disputes and complaints handled, an adjustment was effected through the mediation of the Labor Department of the Exchange and the Joint Board, representing the trade managers of the Union. In only 4¼ % of the total number of cases handled was it necessary to submit the controversy to arbitration. In the 898 cases submitted to arbitration, 30 %
792 were settled by the Impartial Chairman acting as mediator. In 70 % of the cases submitted to arbitration a decision was rendered by the Impartial Chairman, 56 % of which were in favor of the Union, and 44 % in favor of the members of The Exchange.

The bulk of the total clothing output in New York is made in contractors' shops, a pretty accurate estimate being that 75 % to 80 % is so manufactured. This accounts for the fact, that of the

21,193 complaints handled, close to 90% involved firms dealing with contractors. The remainder 793
of the complaints involved either the so-called inside shops, which are factories directly owned by the manufacturer as distinguished from the contractor, or the cutting rooms of the manufacturers.

A great variety of complaints and disputes were handled by both the Labor Department of the Exchange, cooperating with the Union, and the Impartial Chairman. In the cases of firms relying upon production of contractors, these complaints and disputes involved requests for either additional contractors or for changes in the registration of 794
contractors. Other cases involved price disputes; complaints of unsatisfactory workmanship; complaints of tardiness in deliveries; complaints alleging violations of the clause of the agreement pertaining to equitable division of work among registered contractors, etc.

The great majority of the complaints and disputes of manufacturers who own and manage their own shops involved either disputes as to piece prices or questions pertaining to the relationship of management and employees, such as matters of discipline, discharge of workers, etc.

795

With respect to complaints regarding discharge of workers, I desire to point out that the discharges were largely based upon inefficiency and insubordination and not upon Union activity. Before the establishment of the agreements many shop strikes occurred because aggressive Union workers were discharged for alleged Union activity. This created considerable dissatisfaction in the shops among the workers, which resulted in shop strikes. Through the collective bargaining this cause of strikes has

been largely removed. Under the old order, before
796 the Amalgamated was established, many strikes were caused because of the desire on the part of the workers to secure the recognition of the Union on the ground that such recognition meant to them the use of an instrument to enforce Union agreements. The fact of Union recognition practically removed a whole series of complaints based upon discrimination for Union activity.

During the first two years of the existence of the adjustment machinery doubt was often expressed by both sides to the agreement concerning the efficacy of the machinery established, the general feel-
797 ing at first being one of lack of confidence in such machinery. In the beginning both sides submitted to its jurisdiction merely by compulsion. So efficient has the machinery become and so obvious the benefits from its accruing to both sides that at present its value is questioned by but a very few in the industry and as time passes constantly greater use is made of it.

In close to eleven and a half years of the existence of the Impartial machinery in the New York market, there were only seven complaints involv-
798 ing willful non-compliance with the decisions of the Impartial Chairman. Six of these cases were charged against manufacturers and one against the Union. In four of the cases charged against the manufacturers, final compliance was obtained without recourse to courts, and in the one case charged against the Union, compliance was also obtained after a short delay. In only two cases was it found necessary to bringing the controversy involved into courts.

Attached herewith, Exhibit A, is a detailed tabu-

lation and classification of the complaints since the set-up of the Impartial machinery in November, 1924. It is based upon a study made several years back classifying the decisions up to February 29, 1928 in detail. They show that less than 8% of the cases handled by the Clothing Exchange and the Union reached the Impartial Chairman. 799

Further attached, Exhibit B, is an analysis of decisions from October 1st, 1929 to October 1st, 1935. They show the total number of decisions for this period to be 326.

A collective agreement in the Rochester Clothing Market is in force between the Clothiers' Exchange of Rochester, the organized employers, and the Rochester Joint Board of the Amalgamated Clothing Workers of America, since April 1st, 1919. The provisions in the Rochester agreement establishing the principle of mediation and arbitration, and the machinery for its enforcement, is found in Section VII and IX of the agreement, which read as follows: 800

> VIII "This agreement provides for an orderly adjustment of differences, and there is no provocation for direct action. Stoppages are, therefore, prohibited. If, however, a stoppage shall occur, the Union shall immediately order the people to return to work and in the event of their failure to do so, any or all of the participants in or instigators of the stoppage shall be liable to discipline." 801
>
> IX "In case the parties hereto find themselves unable to agree concerning any issue arising under the terms of the Agreement, the

802 dispute shall be referred to an Arbitrator chosen jointly by the two parties to the Agreement. The Arbitrator shall be available at all times for the prompt hearing and decision of cases, and his decision, in cases coming before him under the terms of this Agreement, shall be final.

"The duties and jurisdiction of the Arbitrator are fixed and limited by this Agreement. He shall have no power to enlarge such jurisdiction unless by mutual consent of the two parties to this Agreement. The expense of
803 the Arbitrator's office shall be borne equally by the two parties to this Agreement."

I have functioned as Impartial Chairman appointed by both parties under these provisions since July, 1928. The number of cases filed from that date to the present time is 1,337. The number which reached me for written decision is 395. The remainder, 942, were settled through the efforts of the business agents, representing the Union, and the personnel managers, representing individual employers. In terms of percentages of the total
804 number of cases dealt with, 71 % were either settled or withdrawn, and 29 % reached the Impartial Chairman. The 395 decisions can be classified as follows:

Wages	29
Discharge	41
Piece Work Rates	296
Stoppages	3
Standards of production	6
Miscellaneous	20
	395

From even a cursory study of the figures covering the number of complaints in the New York and Rochester Clothing markets, in which I have had first hand experience as Impartial Chairman and an intimate knowledge of conditions in the Clothing Industry before any collective agreements were established, I am led to the following conclusions concerning the effect of those agreements upon the industry. 805

1. Before collective agreements were enforced in these markets the only weapons employed were weapons of war—the strike and the lockout, which were frequent. With the recognition of the Union and hence collective bargaining, a condition for the functioning of a weapon of peace was established—the Impartial machinery. As a result general strikes in these markets have been eliminated and stoppages in individual shops reduced to the barest minimum. For under the Impartial machinery, in the event of a controversy between employers and workers, the employers are guaranteed continuity of production pending a decision, and the workers speedy adjustment of their grievances. The savings, therefore, in profits to the employers and in wages to the workers have been enormous. 806 807

2. The agreements through collective bargaining have served to stabilize conditions of competition both in the various markets where they are enforced and to a considerable extent nationally. Before the Amalgamated Clothing Workers of America, as a Union, functioned in the Clothing Industry, standards of wages and working conditions in the various shops were not uniform, and com-

808 petition was so keen and often so unscrupulous as to create conditions of exploitation designated by the opprobrious name of "sweatshop."

3. One of the chief sources of this jungle competition was the lack of control over the various contractors who worked for manufacturers. These contractors were frequently pitted against one another by manufacturers to create the lowest level of competition possible for the manufacture of men's clothing. The result was the economic sweatshop, shops in which the workers received wages far below the minimum of subsistence, and fair
809 employers were penalized for maintaining decent standards of wages and working conditions. This uncivilized industrial situation has been largely done away with, for as a result of a collective agreement, the contractors are organized and registered, and an effective control is established by which the Union checks up and prevents the exploitation of workers through the payment of wages below the scale provided for in the agreement and through working conditions which are inconsistent with it. The Union agreement has proven of ines-
810 timable value to the contractors themselves who were frequently exploited by the uncontrolled conditions of competition stimulated by manufacturers, to obtain the lowest price possible for labor.

The general public as distinct from the two parties in controversy has been protected from a distribution of garments made in unsanitary sweatshops. Society has been further protected from the evil effects of industrial warfare through violence and disorders. Society is still further benefited by the reduction of peaks and valleys in employment

and unemployment, which form an integral part of any seasonal industry. Through the equal division of work provisions in the contracts, work is better distributed in the industry and fewer workers become objects of charity through lack of work. 811

I unhesitatingly subscribe to the following conclusion cited in a study of collective agreements in the Men's Clothing Industry found in Bulletin 198, U. S. Bureau of Statistics, Washington, 1916.

> "For many years previous to 1913 a state of general unrest and dissatisfaction with conditions of employment had existed among the workers in the men's clothing industry. This general discontent had found expression on many occasions in strikes, directed, in some instances, against a group of plants in the industry, but in a majority of cases against individual shops. These persistently recurring conflicts, though in some instances resulting in improvements in a few branches of the industry, failed to effect throughout the industry and permanently those changes which were being generally demanded by the workers." 812 813

Subsequent studies have served to strengthen and justify these conclusions. The very existence of the Impartial machinery is a check upon arbitrary action both on the part of employers and workers. It represents the reign of law and order in industry in contrast with the rule of violence and force which prevailed before constitutional government under the Amalgamated agreements was established.

814 The following is an excerpt from a typical decision rendered by me where stoppages occur:

> "The fact of the stoppage of the workers in the shop of ————, contractors to ———— was admitted by the union leaders present. This is a fundamental violation of the agreement and cannot be tolerated by the Impartial Chairman. The argument presented by the representatives of the Union belongs in a conference room with the representatives of the Exchange. Its merits and demerits can be
> 815 weighed by the Impartial Chairman in the event that such a conference is unsuccessful and the matter is finally left by the two parties to him for final decision.
>
> "The stoppage took place without recourse to such a conference. The stoppage is illegal among other reasons because the agreement guarantees continuity of employment to the manufacturers pending negotiations with respect to a controversy. The workers grievances can be considered speedily and with justice toward all.
>
> 816 "The Impartial Chairman therefore instructs the Union to send the people back to work.
>
> "The Impartial machinery contemplates that justice be done to the workers while continuity of production is guaranteed to the employers."

The above is an illustration of industrial relations under collective bargaining through Amalgamated agreements. Under them the workers

have been trained to be law-abiding citizens and to regard direct action or mob rule as a cardinal offense. Workers soon realize that a stoppage is a strike, unauthorized by the Union under collective bargaining. It is behavior which their leaders cannot justify before the Impartial Chairman. It makes a defense by their representatives of their just grievances difficult. For the workers collective bargaining becomes a school for the training of self-control and self-discipline, essential to the functioning of citizens in a democratic industrial arrangement. Through collective bargaining the employers have also learned the advantage to business of peace achieved by law and the rule of reason. 817 818

The underlying principles of constitutional government in industry is eloquently set forth in the preambles of a number of agreements established in the various clothing markets of the country between the Amalgamated Clothing Workers of America and a number of employers, reading as follows:

> "On the part of the employer it is the intention and expectation that this compact of peace will result in the establishment and maintenance of a high order of discipline of efficiency by the willing co-operation of union and workers rather than by the old method of surveillance and coercion; that by the exercise of this discipline all stoppages and interruptions of work and all willful violations of rules will cease; that good standards of workmanship and conduct will be maintained and a proper quantity, quality and cost of pro- 819

duction will be assured; and that out of its
820 operation will issue such co-operation and good will between employers, foremen, union and workers, as will prevent misunderstanding and friction and make for good team work, good business, mutual advantage and mutual respect.

"On the part of the Union it is the intention and expectation that this compact will, with the co-operation of the employer, operate in such a way as to maintain, strengthen and solidify its organization, so that it may be strong enough and efficient enough to coop-
821 erate as contemplated in the preceding paragraph; and also that it may be strong enough to command the respect of the employer without being forced to resort to militant or unfriendly measures.

"On the part of the workers it is the intention and expectation that they pass from the status of wage servants, with no claim on the employer save his economic need, to that of self-respecting parties to an agreement which they have had an equal part with him in
822 making; that this status gives them an assurance of fair and just treatment and protects them against injustice or oppression of those who may have been placed in authority over them; that they will have recourse to a court in the creation of which their votes were equally potent with that of the employer, in which all their grievances may be heard and all their claims adjudicated; that all changes during the life of the pact shall be subject to

the approval of the impartial tribunal and that wages and working conditions shall not fall below the level provided for in the agreement. 823

"The parties to this pact realize that the interest sought to be reconciled herein will tend to pull apart, but they enter it in the faith that by the exercise of the co-operative and constructive spirit it will be possible to bring and keep them together. This will involve as an indispensable pre-requisite the total suppression of the militant spirit by both parties and the development of reason instead of force as the rule of action." 824

It is my deliberate judgment from the experience above set forth as Impartial Chairman in the clothing markets of New York and Rochester and from a knowledge of other markets organized by the Amalgamated Clothing Workers of America, that collective bargaining through Union recognition in the Clothing Industry has made a substantial contribution toward the realization of these principles and, therefore, towards greatly improved industrial relations. 825

HENRY MOSKOWITZ.

Sworn to before me this
30th day of November, 1935.
(Seal)

JEANETTE HANDIN

EXHIBIT "A"

826

Analysis of Decisions to February 29, 1928

INSIDE SHOPS	Reported to Mar. 1, 1927 (2 years & 9 mos.)	Mar. 1, 1927 to Feb. 29, 1928	Total
1 Complaints of underproduction	70	20	90
2 Stoppages	43	19	62
827 3 Discharges	47	17	64
4 Establishment of Production Standards	23	4	27
5 Non compliance with decision and agreements	21	..	21
6 Wage Readjustments	17	6	23
7 Requests for permission to discontinue or reorganize shops	18	20	38
8 Lockouts	5	..	5
828 9 Requests for Special Machinery	4	2	6
10 Changes to lower priced lines	4	..	4
11 Deductions from pay	2	..	2
12 Establishment of new inside plants	..	7	7
Totals	254	95	349

COMPLAINTS INVOLVING CONTRACTORS	Reported to Mar. 1, 1927 (2 years & 9 mos.)	Mar. 1, 1927 to Feb. 29, 1928	Total
1 Stoppages	390	180	578
2 Demands for price reductions from contractors	162	170	332
3 Failure to send work to registered contractors	523	155	678
4 Requests for new or additional contractors	614	277	891
5 Sending work to non-registered contractors	442	149	591
6 Sending work to non-union shops	314	116	430
7 Unsatisfactory workmanship	105	65	170
8 Nonpayment of wages by contractors	57	11	68
9 Lockouts by contractors	8	..	8
10 Demands for increase in price by contractors	46	12	58
11 Disputes over money due contractors	88	20	108
12 Complaints of tardiness in deliveries	176	86	262

829

830

831

	Reported to Mar. 1, 1927 (2 years & 9 mos.)	Mar. 1, 1927 to Feb. 29, 1928	Total
832			
13 Refusals to finish work	77	35	112
14 Adjustments of increases granted Aug. 1, 1926	236	..	236
15 General Lockout by pants contractors, Nov. 1925	24	..	24
16 General organization stoppage in Newark,			
833 Feb. 1926	22	..	22
17 General organization stoppage in knee-pants, Jan. 1926	30	..	30
18 Disputes over insurance rates	8	..	8
19 Use of non-union canvas	11	15	26
20 Special registration of contractors	..	83	83
21 Miscellaneous	112	71	183
834			
Totals	3453	1445	4898

835

CUTTERS' CASES	Reported to Mar. 1, 1927 (2 years & 9 mos.)	Mar. 1, 1927 to Feb. 29, 1928	Total
1 Complaints of underproduction	77	24	101
2 Stoppages	31	21	52
3 Discharges	86	42	128
4 Non-payment for legal holidays	8	3	11
5 Employment of non-union help	10	7	17
6 Requests for reductions in force	26	14	40
7 Unequal Division of time	13	5	18
8 Lockouts	3	..	3
9 Members of firms doing cutting	7	6	13
10 Deductions from pay	9	7	16
11 Disputes over height of lay-ups	9	5	14
12 Disputes over payment of overtime	13	7	20
13 Requests for introduction of production standards	11	2	13
14 Miscellaneous	50	22	72
Totals	353	165	518
GRAND TOTALS	4060	1705	5765

836

837

838

Total Number of cases handled in 3 years & 9 months	5765
Number of cases reaching Impartial Chairman	440
Percentage of cases reaching Impartial Chairman	7 2/3%

EXHIBIT "B"

Analysis of Decisions, October 1, 1929 to October 1, 1935

839

COMPLAINTS ABOUT INSIDE SHOPS	
Discharge, reinstatement, suspension of workers, all causes, including reductions in force	90
Production standards	6
Wage changes or readjustments	30
Discontinuance, removal or reorganization of shops	8
840 Miscellaneous	49
Total number of complaints about inside shops	183

COMPLAINTS ABOUT CONTRACT SHOPS	
Changes in price of garments, all causes, including disputes over money due contractors	41

Failure to send work to registered contractors (usually by using only part of contractors registered for firm)	23	841
Requests for new or additional contractors	26	
Sending work to non-registered or non-union shops	28	
Unsatisfactory workmanship, tardy deliveries	13	
Non-payment of wages by contractors	5	
Miscellaneous	7	842
Total number of complaints about contract shops	143	
TOTAL COMPLAINTS—All Types of Shop	326	

Mr. Wirin: The next affidavit is that of Dr. William M. Leiserson, which will be marked as Board's Exhibit No. 11 for identification. 843

(The paper referred to was marked for identification, "Board's Exhibit No. 11.")

(Board's Exhibit No. 11 is as follows:)

844

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

845

AFFIDAVIT OF DR. WILLIAM M. LEISERSON

District of Columbia, *ss*:

WILLIAM M. LEISERSON being first duly sworn deposes and says:

846

I am now and have been since August, 1934, Chairman of the National Mediation Board, which administers the Railway Labor Act. I was appointed to this position by the President of the United States. Prior to that from July, 1933 to August, 1934 I was Secretary of the National Labor Board and Chairman of the Petroleum Labor Policy Board. I am on leave of absence from Anitoch College where I have been professor of

Economics since 1925, Ph. D. Columbia University in 1911.

847

From 1919 to 1925 I was connected with the clothing industry as "Impartial Chairman" of various labor boards established by collective bargaining agreements of men's clothing manufacturers and the Amalgamated Clothing Workers of America, a national labor union, in the leading cities where ready made clothing is made. From 1919 to 1921 I was Chairman of the Labor Adjustment Board for the clothing industry in Rochester, New York. From there I went in 1921 as Chairman of the Board of Arbitration with the clothing industry of Greater New York. From 1922 to 1925 I was Chairman of the Board of Arbitration for the clothing industry in Chicago. During these same years I acted as Arbitrator in Baltimore under an agreement between Henry Sonneborn and Company and the union of its employees.

848

On various occasions I have also been chosen to arbitrate disputes in the clothing industry in Cleveland, Boston and Montreal. Since 1925, while engaged as Professor of Economics at Anitoch College, I have from time to time been selected as Arbitrator in clothing trade disputes in various cities and have kept in touch with the development of labor relations in the clothing industry. I have also acted as arbitrator in other industries as well. During the war I was Chief of the Division of Labor Administration in the Department of Labor, whose duty it was to assist employers in setting up Personnel Departments and in developing labor policies that would avoid industrial disputes.

849

My first observation of the effect of collective bargaining in promoting harmonious relations between

employers and employees in the clothing industry
850 and the settlement of disputes in a peaceful and orderly manner was in Rochester during the years 1919 to 1921. After a strike in the fall of 1918, the employers and the union agreed on a settlement that included the recognition of the Amalgamated Clothing Workers' Union by eighteen or nineteen employers of the city as the authorized representative of their employees. A collective bargaining agreement was entered into providing that there should be no strikes or lock-outs during the life of the agreement and that a labor adjustment board would be set up, equally representative of the em-
851 ployers and the union with an impartial chairman, agreed upon by both, which would hear and decide all disputes in accordance with the terms of the agreement.

The life of this first agreement was for one year, at the end of which it was renewed for two years, and thereafter the agreement has been modified and extended from time to time, and there has been no serious strike in Rochester since 1919 in the plants of the employers covered by the agreement. There have been a few strikes against employers who have
852 refused to recognize the right of their employees to bargain collectively and to enter into such a collective agreement, but when the right was conceded and an agreement entered into, strikes have ceased and any disputes that arose have been settled by the judicial agencies created by the agreements.

The Rochester agreement and the machinery for maintaining industrial peace which it set up was modeled after a similar agreement and similar arrangements entered into between Hart, Schaffner and Marx of Chicago and the Amalgamated Cloth-

ing Workers' Union in 1919. After a strike in the Spring of 1919, most of the other clothing firms 853
in Chicago recognized the right of their employees to bargain collectively through the union of their choice, and they also entered into agreements setting up arbitration agencies for settling disputes. There has been no strike at Hart, Schaffner and Marx since 1911 when the first agreement was entered into and very few in the plants of other Chicago clothing manufacturers since 1919. The few that have occurred among other manufacturers have resulted usually from attempts of employers to get away from dealing collectively with their 854
employees, discard their agreements and bargain individually with each worker.

For the peaceful settlement of industrial disputes in the clothing industry of Chicago, the agreements have created and maintained two "trade boards" which are, in effect, two lower industrial courts. In addition to these, there is a board of arbitration which has jurisdiction over all matters involving interpretation of the agreements, and which may also hear appeals from the two trade boards.

In the New York market there have been similar agreements with similar arbitration arrangements, 855
but because of the larger number of small manufacturers and the still greater number of contractors and sub-contractors, it has not been possible to include all of them under the agreements. Peaceful settlement of labor disputes by means of collective bargaining contracts has, therefore, not been as steadily maintained in New York as in Rochester and Chicago. Strikes have been more frequent against employers who denied the right of their employees to bargain collectively and against those

856 who attempted to drop their collective agreements with their employees. But the larger firms in this city that have been maintaining agreements have been free from strikes and have settled their disputes by the arbitration agencies established by the agreements.

The most frequent strikes in the clothing industry in recent years have occurred in the smaller cities in various parts of the country where collective bargaining has not prevailed and where the employers have insisted on bargaining individually with their employees and discriminating against those who join a labor organization for the purpose
857 of collective bargaining. Among those who are familiar with the problems of labor relations, it is generally recognized that the individual employee is at a disadvantage in bargaining about terms of employment with an employer who has many employees. He is constrained to accept any terms dictated by the employer, particularly in times of unemployment when he is in no position to help himself. But as soon as a period of recovery sets in he joins with his fellows to get better terms from his employer, and this accounts for the greater
858 number of strikes that usually occur in periods of recovery such as 1933-1935.

The Supreme Court of the United States has taken judicial notice of this inequality in bargaining power of the individual employee in the case of *Holden* v. *Hardy* (169 U. S. 366).

> "The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do

not stand upon an equality, and that their interests are, to a certain extent, conflicting The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority. 859 860

"It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class". 861

In this case, as the Court states, it was necessary for the state legislature to step in and protect the employees against oppressive conditions that resulted from individual bargaining. The Federal Government has at times pursued the same policy, but in general the Federal Government has preferred to avoid specific legislation with respect to terms of employment, and instead to equalize bargaining power between employees and employers

by protecting the right of employees to organize and
862 bargain collectively. In this way Government interference with the details of labor management is avoided and the parties are left free to make their contracts on an equality.

The best example of the Federal Government's policy in this respect is the railway labor legislation. For many years interstate railroad transportation was interrupted and threatened by numerous strikes and disputes. A series of laws, dating from 1888, were enacted by Congress in an effort to deal with these problems. In 1916 a
863 threatened strike resulted in the enactment of the Adamson Act, which fixed a basic eight hour day for railroad employees, but this legislation did not really settle the threatened strike, and in the end it was settled by mutual agreement between the carriers and labor organizations of the employees.

As a result of this and other experience with railway labor legislation, the present Railway Labor Act confines itself to protecting the right of employees to bargaining collectively through labor organizations and to prohibiting the carriers from interfering with this right. It makes it the duty
864 of the carriers and their employees to exert every effort to make and maintain collective contracts, and it sets up a National Railroad Adjustment Board to decide disputes under these agreements in exactly the same way that the arbitration boards in the clothing industry have been doing. When disputes arise regarding proposed changes in the agreements, the National Mediation Board, created under the Railway Labor Act, mediates these disputes and either brings the parties to agreement or

arranges for special arbitration boards to decide them. There have been practically no strikes on the railroads since the Railway Labor Act of 1926 was adopted. Both the reductions in wages during the depression and the restoration of the cuts during the recent period of recovery were accomplished by peaceful collective bargaining negotiations. 865

Apparently the Wagner Labor Disputes Act was an attempt by Congress to extend the policies embodied in the Railway Labor Act to other industries than the railroads operating in interstate commerce. So far as the railroad industry is concerned this policy, as embodied in the Railway Labor Act of 1926, was upheld by the Supreme Court of the United States as a proper exercise of the authority of Congress over interstate commerce in the case of the Texas and New Orleans Railroad Company v. The Brotherhood of Railway Clerks (281 U. S. 584—1930). 866

My own experience over a period of about 25 years in dealing with and in studying labor relations has convinced me that the most effective way of avoiding strikes and other interruptions of industry on account of labor disputes is to equalize bargaining power between employers and employees so that they may govern themselves by their own collective contracts covering wages, hours and conditions of employment. The main cause of disputes is attempted arbitrary action on the part of either managers or employees to impose their will on the other party. When, however, the bargaining power is equalized by the employees acting through organizations, then the views of both parties are adjusted, accommodated or compromised, and embodied in written agreements. 867

These agreements provide rules and regulations
868 democratically made by representatives of both management and men, and are in effect industrial laws equally binding on both. When labor disputes then arise, the adjustment or arbitration boards provided by the agreements or by the Government are in a position to settle them in a peaceful and judicial manner in accordance with the terms of the agreements. This, experience has shown, is the most effective method of avoiding industrial warfare and maintaining amicable and business-like relations between employers and employees.

The men's clothing industry has been a pioneer
869 in developing this method, which the Government has found equally effective in the railroad industry, and which it has now extended to other interstate industries by the Wagner Labor Disputes Act.

Wm. M. Leiserson.

(SEAL)

Subscribed and sworn to before me
this 25th day of November, 1935.
George A. Cook, Notary Public.

870 Mr. Wirin: Next is th eaffidavit of Professor Harry A. Millis, to be marked Board's Exhibit No. 12 for identification.

(The paper referred to was marked for identification, "Board's Exhibit No. 12.")

(Board's Exhibit No 12 is as follows:)

871

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, A Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1 872

AFFIDAVIT OF PROFESSOR HARRY A. MILLIS

City of Chicago, ss.:

HARRY A. MILLIS being first duly sworn deposes and says: 873

I am Professor of Economics and Chairman of the Department of Economics at the University of Chicago, Chicago, Illinois; from July 9, 1934 to June 16, 1935, I was a member of the National Labor Relations Board by designation of the President of the United States, said National Labor Relations Board having been the predecessor of the present Board appointed by the President under the current National Labor Relations Act.

874 From September 2, 1919 to February, 1921, I was full time Trade Board Chairman in the Clothing Industry in the Chicago, Illinois Market except for the Hart, Schaffner and Marx Clothing Company; in February, 1921, I was selected to serve in the latter capacity, also continued to serve until March, 1923, when I returned to my work with the University of Chicago.

As a student of labor problems, residing in Chicago altogether more than twenty-five years, and as Chairman of the Trade Board and then Chairman of the Board of Arbitration, I am familiar
875 with the men's clothing industry particularly labor relations in it, during the old order and under collective bargaining with the Amalgamated Clothing Workers of America.

Prior to 1910, there were low and decidedly unequal wages, irregular hours, much of sweatshop conditions, bad morale, a tremendous turn-over of labor, short eruptive strikes in the busy season. In 1910, such a strike developed in a Hart, Schaffner and Marx shop on the west side, due to another cut of one-fifth of a cent on a minor operation. Though there was no union until the strike had been
876 on for a time, the striking girls were joined by others and the strike spread until it was a general one in the industry. The great revolt ran for many weeks before there was any settlement. Finally, an arbitration agreement, effective in January, 1911, was entered into by Hart, Schaffner and Marx and the workers' organization. It has now operated successfully for almost twenty-five years, and the system is looked upon with pride by the management as well as by the Union.

While collective bargaining obtained in the shops of Hart, Schaffner and Marx, nearly all of the firms, 877
joined in an Association, remained open shop until the summer of 1919. Union membership cards were taken from the workers and to hold a job one had to disavow membership or active interest in a union. The Association, employing a considerable staff, conducted a black-list from a central hiring hall where skilled workers repaired for jobs. Though the hours of labor were made to conform rather closely to hours at Hart, Schaffner and Marx, wages varied greatly from one shop to another. The turn-over of labor was great and the opening of a new 878
season witnesses a mad scramble for help. To be on the safe side, it became rather common to keep the most skilled people in the shop during the slack season and to pay them when there was no work. The moral atmosphere was generally bad; this, I am sure, was the worst phase of the situation as I came to know it.

Of course, the discontent of the workers gave rise to attempts at organization. At times there were strikes, important ones on two occasions. The hiring of guards, the payment of fees to policemen on the beat, the importation of strike breakers, the 879
rounding up of help, and the maintenance of the Association on a war basis cost a great deal of money. Finally, in May, 1919, the old system broke down, one might say of its own weight. Since then the entire market has been on the basis of collective bargaining, the agreements being of the Hart, Schaffner and Marx arbitration type.

I came into the situation as arbitrator for the market outside of Hart, Schaffner and Marx, on September 2, 1919. The most outstanding thing

to me was the quick conversion of the manufacturers
880 to the merits of the new order. For fifteen years scarcely a manufacturer of any importance could be found who would willingly return to the old order. Indeed much that prevailed in the old situation has been looked upon as loathesome or uneconomic.

These are some of the benefits derived from collective bargaining with the Amalgamated in Chicago:

1. Discipline is good and language and moral atmosphere on a high level.

881

2. Through Union cooperation, piece-work has become all but universal in the shops, with production standards in cutting and trimming rooms. These standards were set scientifically by a commission, at the suggestion of the Union.

3. Within a shop, and only less so between shops, piece-rates are fixed on the principle of equal pay for equal effort.

4. Naturally, except for differences in length of
882 the busy season, the chance to earn money is about the same in the different shops. Labor costs are no longer so unequal and the "good" manufacturer is protected from the unequal competition of the bad.

5. After a service record, the worker has a right to his job and can be discharged only for cause. He has, therefore, a chance to plan his family's life.

6. Hence, the turnover of labor is at the minimum and only a very small fraction of what it used to be. 883

7. The workers are on hand when needed, seldom are sections unbalanced, the workers know their work and the quality desired. The output per worker is much larger in a shorter week than it used to be in a longer week.

8. The cost of supervision has been greatly reduced, in the case of one large firm to one-fifth of what it used to be.

9. The Amalgamated has cooperated with the 884
different houses and changes in techniques and manufacture have been made to meet the demands of the market. Examples are found, among many, at Hart, Schaffner and Marx and Kuppenheimer's.

10. Market arbitrations on the terms of a new agreement have occurred only twice since 1919. Arbitrations of grievances have come to be few, for there is what some have termed "law and order" in the industry.

11. Of course industrial peace has been main- 885
tained. There has been only one suspension in a house dealing with the Amalgamated. That was due to the fact that the International Tailoring Company insisted on a ten per cent concession from the market agreement and locked out its employees. Since that unfortunate episode, that particular house has had satisfactory exeprience under the agreement.

12. Turmoil and waste have been replaced by
886 order, peace, good-will and efficiency.

H. A. MILLIS

Subscribed and sworn to before me
this 29th day of November, 1935.

(SEAL)

Virginia Dare Ratcliff

Mr. Wirin: The next is the affidavit of
887 Dr. Benjamin M. Squires, of Chicago, which is to be marked Board's Exhibit No. 13 for identification.

(The paper referred to was marked for identification, "Board's Exhibit No. 13.")

888

(Board's Exhibit No. 13 is as follows:) 889

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, A Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1 890

AFFIDAVIT OF DR. BENJAMIN M. SQUIRES

City of Chicago, *ss.*:

DR. BENJAMIN M. SQUIRES, being duly sworn, testifies that since February 1, 1921 he has been impartial chairman for the interpretation and administration of the agreements between the Amalgamated Clothing Workers of America and the manufacturers of men's and boys' clothing in Chicago; that he has arbitrated labor disputes on occasion in the men's clothing industry in Rochester, N. Y., Milwaukee, Wisconsin, and in Cincinnati, Ohio; that since May 1, 1925, he has been chairman of the trustees of the unemployment insurance funds of the men's clothing industry of Chicago and that he 891

has held other positions qualifying him to testify
892 in the field of industrial relations to wit: Lecturer in Economics, Columbia University, 1921; Professorial Lecturer, University of Chicago, 1929-1935; Expert, U. S. Bureau of Labor Statistics, 1914-1916; Member, Alaskan Board of Arbitration and Conciliation, 1916; Commissioner of Conciliation, U. S. Department of Labor, 1916-1920; Chairman, New York Harbor Wage Adjustment Board, 1917-1918; Executive Secretary, National Adjustment Commission, 1919-1920; Statistician, Employer's European Commission, 1919; Special Arbitrator in the textile, shoe, dry cleaning and newspaper industries;
893 Special Investigator, U. S. Coal Commission, 1922; Executive Director, Textile Labor Relations Board, 1934; (Special Advisor, National Labor Relations Board, 1934).

My first personal contact with the Amalgamated Clothing Workers of America was during 1917 and 1918 through my association with Professor William Z. Ripley, who was an administrator of War Labor Standards for the War Department and assigned to the men's clothing industry. In dealing with civilian labor during the war the government
894 adopted the policy of recognizing existing organizations of labor. The Amalgamated Clothing Workers of America was recognized by the government as the principal organization representing workers in the men's clothing industry. In the establishment and maintenance of labor standards in the men's clothing industry during the war officials of the Amalgamated participated. Unless shops observed the standards thus established they were denied government contracts. It is significant that no strikes occurred in shops engaged on government contracts

in which the Amalgamated had working agreements and no accusation was made that the union took 895
advantage of the situation by boosting wages or exacting unfair labor conditions. With competition for government contracts unusually keen and with a shortage of labor it would have been an easy matter for the union to encourage firms to bid against each other in securing labor at higher wages. The union vigorously opposed competitive bidding for labor.

Prior to 1910 organization of workers in the men's clothing industry was sporadic and under the direction of the United Garment Workers. In that year 896
a strike occurred at Hart, Schaffner and Marx of Chicago, the largest manufacturer of men's clothing in the United States. The strike was begun in one small section of women workers and appears to have been the direct result of a small but arbitrary reduction in piece rates. Basically, however, the strike was the culmination of a succession of grievances having to do with the arbitrary and dictatorial policy of lesser officials of management. The strike spread to all of the factories of the firm in which were employed some 6,000 workers and finally to many of the other firms in the Chicago 897
market. The settlement of the strike marked the beginning of a new era in the industry. The agreement ending the strike at Hart, Schaffner and Marx provided a means of settling grievances through a board of arbitration. What is equally important, the firm provided an avenue by which workers might present grievances without fear of discrimination or retaliation. A labor department was established for the express purpose of improving the relationship between workers and management. The presi-

dent of the company, Mr. Joseph Schaffner, testi-
898 fying before the U. S. Commission on Industrial Relations in 1913 stated, in answer to a question as to whether he would go back to the old way of dealing with employees: "Not in a thousand years. If we did not have an agreement with an organization such as we now have, I would certainly insist on having our employees represented so that they would have an organization among themselves that would dispense the same kind of justice as we now have dispensed by the arbitration board and the trade board. * * * I know now that they (our em-
899 ployees) have a chance to maintain their self-respect." [1]

What is known of the industry prior to the strike at Hart, Schaffner and Marx indicates deplorable conditions. The industry was "sweated"; it had large numbers of immigrant workers and a never failing supply from new immigrants; women constituted fully half of the workers; there was much contract and home work; wages were pitifully low and shops were operated sixty and more hours per week; the industry was spread over the greater part of the country and competition was very keen;
900 there were innumerable small shops and management was arbitrary and autocratic; frequent strikes were characteristic of the industry and thought to be unavoidable.

The method of dealing with labor inaugurated by Hart, Schaffner and Marx following the 1910 strike has been continued by that firm with slight modification to the present time and has been patterned by

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[1] Report of Commission on Industrial Relations, Vol. I, Page 575.

the principal firms and markets in which men's clothing is manufactured. In 1913 there was a split in the United Garment Workers and the Amalgamated Clothing Workers of America was organized. This latter organization is now affiliated with the American Federation of Labor and is recogniged by the Federation as having jurisdiction over the workers in the men's clothing industry. In all of its agreements the Amalgamated has incorporated the provision for collective bargaining in all disputes which arise and has instituted the principle of continuous arbitration. It is worthy of note that no general strike has occurred in any plant operating under an agreement with the Amalgamated and that every decision made by trade boards or boards of arbitration established under such agreements has been carried out. In the early days of these agreements, before the workers became educated to an orderly process, there were occasional strikes by small groups or sections in a shop but these were unauthorized and of short duration. For a number of years there has been no interruption of work in organized shops attributable to strikes.

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Without resorting to direct action or taking undue advantage of the labor market the Amalgamated has brought about a gradual improvement in the wages and working conditions of its members. This has reacted to the benefit of workers in unorganized shops in which management has attempted to anticipate advances in organized shops and thus forestall organization. In the Chicago market nonunion manufacturers paid higher wages to key workers than were paid for similar work at Hart, Schaffner and Marx and in some respects granted

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more favorable conditions. An organization strike
904 was called in Chicago in 1915 and again in 1916 but both strikes were unsuccessful. The non-union employers belonged to a central organization which maintained a black list and no worker was employed who was known to be a union member or to be sympathetic toward the union. In 1919, to forestall unionization, the non-union employers in Chicago reduced hours from 48 to 44. In spite of these efforts to prevent organization the Chicago market was completely organized in 1919 and established a system of collective bargaining with recourse to arbitration. At about the same time the Rochester
905 and New York markets were organized rather completely.

I have indicated that the men's clothing industry is national in scope. Raw materials come from many industrial centers and the distribution of the manufactured product is nation wide, particularly in the case of the nationally advertised merchandise. Lower labor costs due to lower wages and longer hours in unorganized plants bring about swift changes in the flow of materials and finished goods and lead to demands by organized plants for a
906 reduction in costs. The persistent attempts of the Amalgamated to establish minimum rates of pay and uniform hours has done much to eliminate the most vicious of the low price competition. The goal of the Amalgamated, that manufacturers should not be at a competitive disadvantage in the matter of labor costs and should not compete at the expense of labor, has not been reached but efforts to that end have stabilized employment very considerably. At no time, when a strike has

been teminated successfully, has the Amalgamated failed to recognize the conditions and practices 907
of the firm or firms involved or has imposed conditions less favorable than obtain in competing firms operating under agreements. Of course, every serious strike leads to cancellation of orders and loss of business. Some of this business may be captured by organized firms but at the conclusion of the strike and the execution of an agreement the union cooperates by helping to restore the business. Plants under agreement with the union do not make work for plants on strike but customers may cancel orders and place them with firms not 908
affected. In the New York lockout in 1920 and 1921, in the Philadelphia strike of 1928 and in other disturbances, manufacturers in Chicago, Rochester and elsewhere received orders from dealers all over the country whose orders could not be filled by the plants affected by strike or lockout.

Perhaps the most outstanding feature of the arrangement between the Amalgamated and the firms with which it has agreements is the provision for the orderly adjustment of disputes. The impartial machinery, so-called, has been accepted by both sides and, in fact, has become institutional- 909
ized. No question arises of interpretation of the agreement or of practices which is not referred to the impartial machinery if the parties cannot agree. Even the renewal of the agreement is subject to arbitration if the parties deadlock on any of the terms. The impartial machinery may not change the specific terms of the agreement or add thereto during the life of such agreement but by mediation and wise counselling many differences

are adjusted even though they involve a modifica-
910 tion of the agreement. In the Chicago market, since the first agreement in 1910, nearly ten thousand decisions on every conceivable grievance have been made by the trade boards and the board of arbitration. The tendency at the outset was to refer most disputes to the arbitrator but for a number of years the parties themselves have taken the responsibility for critical decisions and the arbitrator plays a larger role as mediator and advisor.

The principle of the preferential shop, recog-
911 nized in all agreements to which the Amalgamated is a party, gave rise to charges of inefficiency in the selection of workers to fill vacancies. One arbitrator declared that the filling of requisitions for workers by the union was a "grab bag" system so far as the employer was concerned and recommended that employment offices be operated jointly by the union and employers. The union met this criticism by employing an outstanding employment office manager who established union employment offices on a basis at once so impartial and efficient that no further complaint was made by
912 employers that workers were poorly selected.

Unemployment insurance, jointly administered by boards of trustees representing the union and the employers with an impartial chairman, was introduced in the Chicago market in 1923 and shortly thereafter in New York City and Rochester. Funds are obtained by contributions from employers and workers in the Chicago market, whereas in New York City and Rochester employers are the sole contributors. Some seven million dol-

lars has been collected in the Chicago market and about six million dollars has been paid out in unemployment benefits. The system operates without argument or friction and although the benefits per worker are not large they provide a cushion to absorb the most severe shocks due to lack of work.

Less widely known but perhaps more significant than the advertised accomplishments of the industry in its relationship with the union are the things done which might be described by the expression "cooperative management with the labor union". The practice of market-wide wage adjustments was abandoned more than ten years ago in favor of individual adjustments to meet individual programs. Garments were analyzed, processes studied and rates established in cooperation with the union to enable a given firm to produce a garment which it could market on an equal basis with its competitors. Even in the matter of overhead the union has been alert to suggest the consolidation of shops and of sections and to assume responsibility for quality which has resulted in a sharp reduction in the amount of supervision. Rates have been reduced where earnings were excessive even though the union was under no obligation to make such reductions. Restrictive practices have been modified by agreement and sometimes eliminated entirely where changes in manufacture or in distribution made such restrictions oppressive. The constant aim of the Amalgamated has been to improve the lot of its members without penalizing the employers with whom the union has contractual relationship. If there is in this the selfish motive

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910 tion of the agreement. In the Chicago market, since the first agreement in 1910, nearly ten thousand decisions on every conceivable grievance have been made by the trade boards and the board of arbitration. The tendency at the outset was to refer most disputes to the arbitrator but for a number of years the parties themselves have taken the responsibility for critical decisions and the arbitrator plays a larger role as mediator and advisor.

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of not wanting to penalize its own members through
916 less employment then at least the Amalgamated may be credited with being far-sighted.

With the protection afforded to the public and to the industry through the instrumentality of impartial boards and with the record of the Amalgamated of a constructive, cooperative and conservative approach to the problems of the industry it would seem that greater stability would be assured if organization were on national lines and if the competitive menace of low labor cost centers were removed. That the Amalgamated will con-
917 tinue its organization activity is to be assumed. This activity will concentrate in those centers where labor is unprotected, poorly paid and subjected to unwholesome conditions. Strikes may be expected and these will upset markets and the flow of goods in interstate commerce. What the Amalgamated has to offer to the workers in the industry is better conditions and a greater measure of security; what it has to offer to employers in the industry is stability of operation, efficient and well disciplined workers and a greater measure of competitive equality in labor costs. No obstacle
918 is placed in the way of individual initiative or efficiency. The union will continue to cooperate in encouraging more capable management.

Finally, the Amalgamated is wholly democratic in constitution and procedure. All officers and all representatives both inside and outside the shop are elected by popular vote for a given period of time. With the exception of the national officers, who are elected for two years, the term of office of officials and shop representatives is one year. Elec-

ted boards carry on the affairs of the organization between elections but their actions must be ratified by the rank and file. In conferences and negotiations with employers there is mutual courtesy and consideration. Personalities have no place in conferences or in hearing before the impartial boards. A considerable measure of idealism may have manifested itself in the development of a new relationship in the men's clothing industry but the arrangement has continued to work largely because it has been found to be good business. 919

BENJAMIN M. SQUIRES 920

(SEAL)

Subscribed and sworn to before me
this 2nd day of Dec. 1935.

HANNAH M. CONNORS.

Mr. Wirin: Next is the affidavit of Boris Maruchess, of New York City, which is to be Board's Exhibit No. 14 for identification. 921

(The paper referred to was marked for identification, "Board's Exhibit No. 14.")

(Board's Exhibit No. 14 is as follows:)

922

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, A Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

923

AFFIDAVIT OF BORIS MARUCHESS

State of New York,
County of New York, *ss*:

924 BORIS MARUCHESS being duly sworn, deposes and says:

I reside at the Hotel Brevoort, Fifth Avenue, New York City. For the past twelve years, I have been labor manager for the New York Clothing Manufacturers Exchange, Inc., a New York Corporation, having its principal office at 22 East 17th Street, New York City.

Between the year 1912-1914, I worked as field agent and statistician for the Bureau of Labor

Statistics, U. S. Department of Labor, as well as field agent and mediator for the U. S. Commission on Industrial Relations. In 1915 I became assistant labor manager of the New York Dress and Waist Manufacturers Association, and in 1916, manager of it. From 1920-1922, I occupied the position of labor manager of both the Dress and Waist Manufacturers Association and the United Shirt Manufacturers Exchange of New York. Between the years 1922 and 1924, I had the position of general manager of the United Shirt Manufacturers Exchange. I collaborated with Charles H. Winslow and Dr. Boris Emmet in the compilation of several reports issued by the U. S. Bureau of Labor Statistics on labor and industrial problems in the needle trades. In addition, on different times prior to 1924, I acted as both mediator and arbitrator in labor disputes arising in the printing, mattress and automotive electrical appliance trades. Since 1924, I have been giving all of my time, as a paid executive, as labor manager of the Exchange. 925 926

The Spring of 1924 saw a general strike in the clothing industry of New York which involved all of the clothing manufacturing firms in the New York area, numbering about 500, and all of the workers employed in these firms, totaling approximately 35,000. The strike succeeded in tying up the entire industry in New York, being approximately 100% effective. It lasted about six weeks. On the part of the employees, the cost in terms of wage losses was from $5,000,000. to $6,000,000; on the part of the employers, the financial loss occassioned by the strike cannot be estimated. Certainly it ran into many millions of dollars. A similar general 927

928 strike in the New York clothing market had occurred in 1921. It lasted for more than eight months; its consequences were disastrous. On that occasion also, the 35,000 to 40,000 clothing workers then engaged in the industry in New York stopped working; all of the manufacturers in the New York market were involved. Both on the part of employers and employees, the losses direct and indirect ran into many millions of dollars. The capital invested by the manufacturers had been so depleted by the strike and loss of business incident thereto and the 1921 strike was so disastrous to the indus-
929 try, that a few farsighted manufacturers in 1924 recognized that if the 1921 strike were permitted to continue, the clothing industry would be entirely destroyed insofar as the New York market was concerned.

Accordingly, representatives of these outstanding manufacturers met at the Hotel Albert and organized themselves into an association, which was thereafter to be known as the New York Clothing Manufacturer's Exchange, Inc. The names of those manufacturers are as follows:

930 Kahn-Dreifus & Levy
J. Eisner & Son
Spiro-Michael
L. J. & C. D. Jaffee, Inc.
Wm. P. Goldman & Bro.
Douglis-Mack Co.

Several days thereafter, they met with representatives of the Amalgamated Clothing Workers of America, consisting of Sidney Hillman and some of his assistants. The Amalgamated and Mr. Hillman

had been designated by the workers on strike to represent them for the purpose of collective bargaining, and arriving at an agreement for the settlement of disputes between the workers and their employers. 931

Within a period of less than ten days after these collective bargaining negotiations began, an agreement had been reached with the workers on strike though the Amalgamated Clothing Workers' Union.

The four vital points in the agreement are (1), recognition by the employer of the right of collectvie bargaining on the part of the workers; (2) recognition by the employers of the Amalgamated Clothing Workers of America as the representative of the workers for the purpose of collective bargaining; (3) the establishment of machinery for collective bargaining; (4) the establishment of machinery for impartial hearings and arbitration. 932

Obviously, each one of the above was corellary to the preceding point. Insofar as the machinery for the adjustment of disputes was concerned, the agreement provided for arbitration machinery, which meant that where disputes could not be adjusted between a representative of the employer's on the one hand, representatives of the employees on the other, such disputes should be submitted to arbitration and the decision of the arbitrator to be final, binding and conclusive upon the parties. 933

A copy of this agreement is attached to this affidavit.

By the establishment of these four principles and practices in the clothing industry, we hoped to abolish unlawful stoppages, lockouts and strikes. How we have succeeded in doing that is contained in a statement made by Dr. Henry Moskowitz, who,

for some time has acted as Impartial Chairman and
934 who succeeded Jacob Billikopf, the first Impartial Chairman in the clothing industry under the market agreement of 1924.

I will be forgiven if I display the pride that I have in the accomplishment by reiterating the statements made by Dr. Moskowitz to the effect, that during the twelve years that I was labor manager of the Clothing Exchange, there were no strikes or lockouts in the clothing industry, involving members of the Exchange.

Our membership started with six in number. In the ten days following the strike of 1924, our mem-
935 bership increased to over 100. Soon thereafter, the largest producers in the City of New York joined the Exchange, and we have at all times during these twelve years, maintained a membership of 250 manufacturers in New York, whose production represents about 70% of the clothing manufactured in this market.

Membership in the Exchange includes manufacturers who produce men's clothing not only in the City of New York, but also in the eastern part of Pennsylvania, the State of New Jersey, and sever-
936 al small towns of Connecticut.

The Labor Department of the Exchange has negotiated and adjusted approximately 21,000 complaints, differences and disputes between employers and employees; the employers being represented by the Exchange through a representative and the workers being represented by the Amalgamated Clothing Workers through its representative. 95% of these have been adjusted without recourse even to the Impartial Machinery.

Throughout this period, since 1924 to the present

as already stated, there have been no general strikes or stoppages or lockouts from the industry. On rare occasion there have been temporary stoppages; all have been illegal in that they were violative of the 1924 agreement and subsequent agreements entered into between the Exchange and the Amalgamated, the Exchange representing all the employer members and the Amalgamated representing all of the employees, participating in the collective bargaining agreements. 937

Whenever employees resorted to such illegal strikes, the official representatives of the Amalgamated Union have exerted every influence upon those responsible for and participating in such strikes, to call such strikes off; the Amalgamated issued orders to that effect; in every instance such strikes were rapidly terminated. On the other hand, in those instances when employers have resorted to unlawful lockouts, officials of the Exchange have similarly ordered such lockouts to halt and have succeeded in having them called off. 938

As the result of my experience as labor manager in the clothing industry in New York, and as labor manager in the other industries enumerated by me above, it is my opinion that strikes and lockouts can be, as they have been, prevented and industrial peace maintained, by the entry into agreements between employers and employees, where such agreements are arrived at through the process of collective bargaining and when such agreements set up machinery for the adjustment of disputes in the industry. 939

BORIS MARUCHESS.

(SEAL)

Subscribed and sworn to before me this 2nd day of December, 1935.

AGREEMENT

940

This agreement is entered into between the N. Y. CLOTHING MFRS. EXCHANGE, INC. IN BEHALF OF ITSELF and each of its members, and the AMALGAMATED CLOTHING WORKERS OF AMERICA, and is effective from June 20, 1924, to June 30, 1925.

Because of the desire of both parties to this agreement to have the workers return to work as soon as possible, it is deemed advisable not to enter into the details of the agreement at this time, leaving that to be worked out in the future con-
941 ferences between the representatives of the Association and the Amalgamated and to set forth at this time the main terms of the agreement only.

1. It is agreed that the principle of the Union shop shall prevail in all of the shops of the members of the Association as well as the contracting shops working for the members of the Association.

2. It is agreed that the present wages shall remain in force; with the understanding that a joint committee representing the Association and the
942 Union be appointed within thirty days to establish scales of minimum wages dependent upon production. It is understood that the introduction of the minimum scale of wages shall not increase present costs of production.

3. An unemployment insurance fund is to be established, beginning with December 1, 1924. An amount equal to three per cent (3%) of the weekly payroll shall be paid into this fund each week. One-

half of this amount shall be borne by the manufacturers and contractors, and the other half by the employees. 943

4. It is agreed that the detailed agreement to be worked out shall provide arbitration machinery.

(Signed) By the Amalgamated Clothing Workers of America and the N. Y. Clothing Mfrs. Exchange, Inc.

Mr. Wirin: Our next affidavit is that of Mr. Charles D. Jaffee, of New York City, to be marked Board's Exhibit No. 15 for identification. 944

(The paper referred to was marked for identification, "Board's Exhibit No. 15.")

945

(Board's Exhibit No. 15 is as follows:)

946

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, 947 A Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

AFFIDAVIT OF CHARLES D. JAFFEE

State of New York,
County of New York, *ss*:

CHARLES D. JAFFEE, being duly sworn, de-
948 poses and says:

I am President of Jaffee-Cohen & Lang, Inc., clothing manufacturers, in New York City. For over thirty years I have been actively engaged in the clothing business in the City of New York, manufacturing men's and young men's clothing.

For the past eleven years I have been President of the New York Clothing Manufacturer's Exchange, Inc., organized in 1924 upon the occasion

of a general strike in the clothing industry in the New York market. The Exchange has since then, as it does at the present time, engage in collective bargaining as the representative of the employers in its membership, with the Amalgamated Clothing Workers of America, as a representative of the workers represented by it. The agreement entered into between the Exchange and the Amalgamated in 1924, a copy of which is attached to the affidavit filed in this proceeding by Boris Maruchess, labor manager for this exchange, has been summarized in an official publication of the Exchange printed in 1934 on the occasion of the 10th Anniversary of the Exchange, as follows: ". . . that the principles of the union shop were to be recognized, that schedules of minimum wages dependent upon and commensurate with production were to be adopted, that unemployment insurance was to be established in the future and that impartial machinery for settlement of differences was to be created". (Page 5) A copy of said publication is attached to this affidavit.

949

950

This market agreement has been aptly described as "a document in New York Clothing history comparable in significance to the Constitution in American history". (page 5)

951

On the occasion of its 10th anniversary, in discussing the experience of both employers and employees under a regime initiated by this agreement, I described it as "constitutionalism in our industry". I said further, "Like all progressive steps in the advancement of human relationship, it met with much scepticism and no little opposition, a scepticism born from lack of courage and vision to inter-

(Board's Exhibit No. 15 is as follows:)

946

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, 947 A Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1

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County of New York, *ss*:

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948 poses and says:

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For the past eleven years I have been President of the New York Clothing Manufacturer's Exchange, Inc., organized in 1924 upon the occasion

of a general strike in the clothing industry in the New York market. The Exchange has since then, as it does at the present time, engage in collective bargaining as the representative of the employers in its membership, with the Amalgamated Clothing Workers of America, as a representative of the workers represented by it. The agreement entered into between the Exchange and the Amalgamated in 1924, a copy of which is attached to the affidavit filed in this proceeding by Boris Maruchess, labor manager for this exchange, has been summarized in an official publication of the Exchange printed in 1934 on the occasion of the 10th Anniversary of the Exchange, as follows: ". . . that the principles of the union shop were to be recognized, that schedules of minimum wages dependent upon and commensurate with production were to be adopted, that unemployment insurance was to be established in the future and that impartial machinery for settlement of differences was to be created". (Page 5) A copy of said publication is attached to this affidavit.

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On the occasion of its 10th anniversary, in discussing the experience of both employers and employees under a regime initiated by this agreement, I described it as "constitutionalism in our industry". I said further, "Like all progressive steps in the advancement of human relationship, it met with much scepticism and no little opposition, a scepticism born from lack of courage and vision to inter-

952 pret current history. Yet undaunted, the Exchange grew from small seeds and obscure beginnings, for it was inspired and guided by a philosophy which sought a better understanding between employer and employee for the greater security and benefit of both. May I state with pardonable pride that ten years ago the Exchange and the Amalgamated leadership recognized the forces that were working their way into the economic foreground and the movements that lead inevitably to progress in civilization. The organization of collective bargaining machinery, the establishment of an impartial
953 tribunal, and the founding of unemployment insurance are the outstanding achievements of the movement thus far". (page 13 of publication attached)

In discussing the relationship between the Amalgamated Clothing Workers of America and the New York Clothing Manufacturers Exchange and the cooperation toward industrial peace in the clothing industry by representatives of both employers and employees, the Exchange in its official summary of the experience up to 1934, stated, "No statement of the attainments of the New York Clothing Manufacturers Exchange, no history of its
954 accomplishments could possibly present a complete picture of the market without a proper reference to Sidney Hillman and the Amalgamated Clothing Workers of America. This man, who will occupy a place in Labor's Hall of Fame, "has", in the words of the jury which voted him the Harmon Award in 1928, "done so much to demonstrate the dignity and responsibility which may accrue to the working classes and to point the way toward the achievement of happier and fuller lives for the workers!" The President of the United States has recognized

the great merit of Mr. Hillman's contributions to a New Deal for labor and industry by appointing him a member of the National Labor Board where, in addition to his other manifold services, he is today devoting his talents to the President's program." 955

"Sidney Hillman brought to New York a wealth of experience which he had gained from his efforts in Chicago and Rochester. His keen understanding of the needs of men,—whether laboring men or managing men,—has given him the capacity to encourage and aid the manufacturer, while at the same time, pursue with an unflinching tenacity that which the cause of his life demanded. He never turned the back of his hand to a friend, nor his back to an enemy. These qualities, plus native brilliance, profound knowledge and an untiring source of energy, have made the Amalgamated Clothing Workers of America a foremost American Union, and have been perhaps the largest single contributing factor to the lasting peace and harmony that has characterized those clothing markets where the Amalgamated Clothing Workers of America was the other contracting party to the collective agreement. However, unbounded though the praises may be for those who have given their time, effort and abilities to the Exchange, a proper and fair appraisal of the ten years of successful industrial relationships in New York, demands the apportionment of a full share of the honor to Sidney Hillman." (pages 9 and 10 of publication attached) 956 957

Made in April, 1934, over a year prior to the
958 present controversy before the National Labor Relations Board between the Amalgamated Clothing Workers and the Friedman-Harry Marks Clothing Company, these statements are equally as true today as they were in 1934.

CHAS. D. JAFFEE.

Subscribed and Sworn to before me
this 2nd Day of December, 1935.

(SEAL)

959 JACK YEIDEN

Mr. Wirin: With respect to this affidavit, there is attached to it a handsomely bound pamphlet, published by the New York Clothing Manufacturers' Exchange, containing photographs of a number of manufacturers, as well as apparently a letter from the President of the United States. In any event, let it be stipulated that the attached
960 pamphlet be marked as an exhibit and be incorporated in any printing of this record but, manifestly, not copied by the stenographer.

Mr. Weinberg: All right.

Mr. Wirin: The next exhibit here is that of Max L. Holtz, of New York City, which is the Board's Exhibit No. 16 for identification.

(The paper referred to was marked for identification, "Board's Exhibit No. 16.")

(Board's Exhibit No. 16 is as follows:)

961

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, A Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-1 962

AFFIDAVIT OF MAX L. HOLTZ

State of New York,
County of , *ss*:

MAX L. HOLTZ, being duly sworn, deposes and says: I reside in the City of Rochester, State of New York. I am the President of Holtz, Rochester, Inc., a company which is engaged in the manufacture of men's clothing in the city of Rochester. For years I was president of Louis Holtz & Sons, Inc., a concern which also manufactured men's clothing. 963

I am now and for 17 years last past, have been President of the Clothiers' Exchange of Rochester, New York, an Association composed of clothing manufacturers operating in the City of Rochester, State of New York.

964 The principal functions of the Association are to deal collectively with the workers in the clothing industry in Rochester. These workers are members of the Amalgamated Clothing Workers and are represented by the Rochester Joint Board of the Amalgamated, and have been so represented since 1919.

The membership of the Rochester Clothiers' Exchange now includes 5 leading clothing manufacturers, employing 6500 workers.

The first collective market agreement entered into between the Association and the Amalgamated
965 Clothing Workers for the Rochester area was made in 1919.

A copy of this agreement is attached. See page 7.

The principal points in this agreement consist in the recognition of the principles of collective bargaining and the creation of machinery for the solution of disputes by adjustment and arbitration, as a substitute for strikes and lockouts.

In my experience as President of the Association for the past 17 years, we have had no strikes, or lockouts, and no disputes which could not be
966 and were not adjusted speedily, either by the parties concerned, or after a hearing before the Impartial Chairman.

It is my opinion, based upon this experience, that once the principle of collective bargaining is recognized and machinery is set up for the adjustment and arbitration of disputes under an agreement reached through collective bargaining, industrial peace may replace industrial war.

MAX L. HOLTZ.

Subscribed and sworn to before me
this 3rd day of December, 1935.

(SEAL)

Mr. Wirin: The next is the affidavit of Morris Greenberg, of Chicago, which is offered as Board's Exhibit No. 17 for identification. 967

(The paper referred to was marked for identification, "Board's Exhibit No. 17".)

(Board's Exhibit No. 17 is as follows:)

UNITED STATES OF AMERICA

BEFORE THE 968

NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, A Corporation

and

AMALGAMATED CLOTHING WORKERS OF AMERICA 969

State of Illinois,
County of Cook, *ss*:

MORRIS GREENBERG, being first duly sworn, deposes and says:

1. From the years 1913 to 1918 inclusive, I was employed by the firm of K. Katz & Sons of Balti-

970 more Maryland, manufacturers of men's clothing, who sold their product in their own retail establishments. During this employment, I worked in all of the shops and factory departments in the business of K. Katz & Sons, and acquired a first hand practical knowledge of the processes involved in the manufacture of clothing.

2. During 1918 and 1919, I was employed by S. F. & A. F. Miller & Co., manufacturers of men's clothing. I was in charge of their manufacturing departments.

971 3. During the aforesaid years of 1918 and 1919, I prepared a Manual, to be used by manufacturers in the clothing industry. This Manual was an illustrated and written description of the most important technical processes in the manufacture of clothing. This Manual was published and used by the members of the Baltimore Association of Clothing Manufacturers.

4. During the years 1920 through and including 1925, I was a member of the firm of Jacob A. Abt & Staff, Chicago, Illinois, which firm was engaged 972 in the business of rendering advice and service in connection with technical manufacturing, and industrial relations problems in the clothing industry, hat and cap industry, and shoe industry.

5. During that period, I was engaged for consultations in technical manufacturing problems by a large number of important clothing manufacturers in various parts of the United States.

6. In 1933 and 1934, I was employed by the National Recovery Administration, and most of my assignments involved investigations of technical problems, piece rates, wage rates and labor costs in the various operations involved in the manufacture of men's and women's clothing. 973

7. From February 1935 to the end of May 1935, I was the Executive Director of the Men's Clothing Code Authority.

8. Since June 1935, I have been, and am now in complete charge of manufacturing of clothing for the firm of Hart Schaffner & Marx of Chicago. 974

9. All the processes of manufacturing of the Company come under my supervision and control, and I am personally familiar with all of said processes.

10. The manufacturing process of men's clothing in the United States is as follows:

(a) The specification and purchasing of raw materials which consist of the following:

Wool cloth, cotton and rayon cloths, canvasses, silesia, felt, haircloth, sewing materials, buttons, and such accessories as are required for the manufacture of clothing. 975

(b) Examination and classification of fabrics to determine the proper method of shrinking, sponging and to locate defects in the cloth.

(c) Sponging and shrinking of wool cloth, canvasses, etc.

(d) Preparation of cutting, trimming and routing schedules, allocating the various raw materials according to size, style and customer.

(e) The cutting of the cloth, linings, canvas and other materials according to size, model and customer.

(f) The assembly of the cut materials through the many sewing, basting and pressing operations into separate garments, such as coats, pants and vests.

(g) The further assembly of these separate units into completed suits, and the further assembly of these completed suits by customers' orders.

(h) The shipment of orders to customers.

(i) The keeping and assembly of stock incident to the above, at which point, customers' labels are sewed on to the garments.

(j) The correction of defects in that portion of the product which is returned by customers for latent and other faults in manufacturing, and reshipment of such altered garments.

11. The above description of the various steps in the process of producing and manufacturing of men's clothing, is not only typical but represents the essential and indispensable steps in the course of manufacturing in every clothing manufacturing establishment in the United States.

MORRIS GREENBERG.

(SEAL)

Sworn to before me this
12th day of November, 1935.

MORRIS NEUFELD
Notary Public.

Mr. Wirin: May I say for the purpose of the record that we now have concluded putting in affidavits concerning the jurisdictional facts or basis for this proceeding, and are now about to proceed with introducing affidavits in accordance with the stipulation concerning the so-called merits of the case, namely, the alleged unfair labor practices. 979

(Discussion off the record.)

Mr. Wirin: I now offer as Exhibit No. 2 a paper containing certain written matter, which paper was circulated at the plant of the Friedman-Harry Marks Clothing Company. 980

Mr. Weinberg: What will that be marked?

Mr. Wirin: Board's Exhibit No. 2, and that is to be copied into the record.

(The paper referred to was received in evidence and marked Board's Exhibit No. 2.)

(Board's Exhibit No. 2 is as follows:)

981

In view of the stubborn efforts on the part of certain organizers to create dissatisfaction and discord among us, we, the employees of Friedman, Harry Marks Clo. Co. want to take this means of conveying to our employers our loyalty to the firm, and the satisfaction of our working conditions.

For the last number of weeks many at our home have been visited by these so-called organizers, who, even against our wishes, rudely persist in doing everything possible to stir up trouble in our factory.

982 We know better than anyone else, that the things they tell us and the statements they give the newspapers are falsehoods, we know that our employers have lived up to the Code when the N. R. A. was alive, and that they are now living up to the promise they made to us when the N. R. A. was declared unconstitutional.

The visits on the part of the organizers are unsolicited and uninvited, we would appreciate their refraining from intruding upon the privacy of our homes.

983 We want our employers, and anyone else interested, to know that we are happy with our working conditions, and what we particularly desire now is that we be allowed to enjoy them peacefully.

(Unsigned)

Mr. Wirin: Our next exhibit is an affidavit by Farley Holder, of Richmond, which is to be marked for identification at this time as Board's Exhibit No. 18.

(The paper referred to was marked for identification, Board's Exhibit No.
984 18.)

(Board's Exhibit No. 18 is as follows:)

FARLEY HOLDER, 3321 Delaware Avenue, Richmond, Virginia, a witness for the complainant, deposes as follows:

He started work at the Friedman-Harry Marks Clothing Company in June 1931, as an out-presser.

There were no complaints of his work except the usual small criticisms. On June 27, 1935, he attended a meeting at the Trinity Methodist Church, at which about eight other employees of the Company were present. Charles Webber of the Union Theological Seminary, organizer for the Amalgamated Clothing Workers of America, conducted this meeting. On June 28, 1935, he was not supposed to work; about 11:00 A. M. he went in to press some of his own clothes. November, superintendent of the plant, saw him and said he wanted to talk to him. Morton Marks was present at the conversation. November had his check in his hand. November said this was going to be very unpleasant. He said he had seen him at the Union meeting the night before. He, Morton Marks, said that he could not afford to have him working in the plant if he joined the Union, because he would get two more to join, and they would in turn get two more, etc. He, November, said that he and Morton had both been at the Union meeting and had seen and heard all that went on. They said that they liked him fine and hated to have to get rid of him. Mr. Marks said that Mr. November would be glad to give him as fine a recommendation as could be written to get a position elsewhere. He said positively that he was not going to run a Union shop. Morton Marks said that if he would go home awhile until things blew over, he would do his best to get him back on. He has not been employed at the plant since, though he applied for a re-instatement on July 31. 985 986 987

Before the N. R. A. was declared unconstitutional the Company paid in check for the regular hours

worked and in cash for any over-time worked. He
988 feels that this was done in order that the books of the Company might not show that the Code had been violated.

(Signed) Farley Holder

Subscribed and sworn to
before me this 11th day
of November, 1935.

W. J. Griggs,
Notary Public.
My Commission Expires June 7th, 1936.

989

(SEAL)

Mr. Weinberg: In addition to the other objections which are being noted by stipulation, I wish to call the Examiner's and the Board's attention to the fact that we specifically object to this affidavit on the ground that Farley Holder is not named as one of the persons dismissed in this complaint in this first case, and that the dismissal of Farley Holder from the service of the re-
990 spondent occurred long before the date of the Wagner—National Labor Relation's Act and, therefore, we certainly cannot be charged in this proceeding with a violation of the Act when the occurrence was before the date of the passage and approval of the Act.

Mr. Wirin: May I state in that connection that counsel does not understand, and I do not blame him, because we have not

explained it to him yet, the reason for this affidavit. It is true that Farley Holder is 991
not named as a person who was dismissed, in the complaint. It is true also, therefore, that we do not ask the Examiner or the Board to make any order upon the respondent with respect to the reinstatement and back pay or any other remedies, in so far as Farley Holder is concerned, and it is true, also, that the discharge, the discriminatory discharge on the ground of Union activities, as set forth by Holder, was made prior to the signature of the National Labor 992
Relations Act by the President of the United States. It is being offered as a part of the evidence which the Board has to offer to show the plan and purpose and program and intent of the company to discriminate against all persons who became members, or its workers, who became members of the Amalgamated Clothing Workers of America. It is offered for that sole purpose alone and for that purpose, and that limited purpose for which it is offered, we submit, is material as showing the intent on the part 993
of the company to carry on this consistent discrimination against the workers because of their Union activities, a program which began to be shown before the Act went into effect, began, as we contend, because the Act was not then in effect, the company thinking that since the Act was not then in effect, that they were immune to any prosecution for violations of this law, either before the time the Act went into effect or thereafter.

994 In any event, we offer the affidavit for such probative value as it has.

Trial Examiner Perring: It will be accepted under the usual stipulation with the additional objection of counsel.

Mr. Wirin: The next is Board's Exhibit No. 19 for identification, and that is an affidavit by Mrs. Beulah Ashworth.

(The paper referred to was marked for identification, Board's Exhibit No. 19.)

995 (Board's Exhibit No. 19 is as follows:)

MRS. BEULAH ASHWORTH, 2306 East Grace Street, Richmond, Virginia, a witness for the complainant, deposes as follows:

She started work at Friedman-Harry Marks Clothing Company in 1927, as a pants maker. In the summer of 1933 leaflets were distributed outside the plant by the Amalgamated Clothing Workers of America. Officers of the Company, Morton Marks, Greenberg, Keevie Marks, and November, one of
996 the employees, warned the employees as they left the plant not to take any of the literature. Frank Paul, an employee, took a leaflet and was thereupon discharged by Greenberg. On the following day his wife and his wife's brother were also discharged. A petition similar in its wording to that of Exhibit Number Two was circulated in the plant in the summer of 1933. Mrs. Ashworth at first refused to sign this petition and was told by Huffman that they would make it hard for her in the office if she refused to sign. She then signed it.

There had been no complaints of her work. On June 27, 1935, she attended a Union meeting at Trinity Methodist Church. On the next evening, June 28, she was laid off by Morton Marks, Keevie Marks, and November. Usually the foreman did the laying off. Mr. Ashworth, who was also employed at the plant, was laid off at the same time. Her brother, Farley Holder, had been discharged earlier in the day. November said he had something disagreeable to tell her and she replied that she knew it was about the Union meeting. November and Morton Marks said they were surprised to see them sitting down there in the church, and they could have knocked them over with a feather. He said they were out in the car lot when they saw them, and Morton Marks said he had gotten grass stains on his pants and had a devil of a time trying to explain to his wife how he got them. Mrs. Ashworth said she had seen faces at the window and Marks admitted that it was he and November. November and Marks said they liked the Ashworth's work and character and would write them a good recommendation; that if they would go away awhile until things blew over, they would take them back. He said he was making examples of them because they both had been there a long time. They said the Union was the worst thing in the world; that if they got in to the Union, they would not have work half the time; and that they would have so much upstir in the plant that they could not work. He said that the Union was all right in New York but not in Richmond. 997 998 999

On the following day they returned for their money and Morton Marks said that if the Wagner Bill were signed, he would give them their jobs back.

About ten days later a delegation of ministers sent
1000 the Ashworths back to the plant to re-apply for their jobs and at that time Marks said the Wagner Bill had nothing to do with it. At that time November said, "What would you do if you came back?" They refused to come back with any strings tied to them, but said they would not talk about the Union during the working hours. Greenberg said that it seemed they were taking a dirty attitude and that he would let things remain as they were.

(Signed) Mrs. Beulah Ashworth.

1001 (Signed) Mrs. H. L. Ashworth.

Subscribed and sworn to
before me this 11th day
of November, 1935.

W. J. Griggs,
Notary Public.
My Commission Expires June 7th 1936.

(SEAL)

1002 Mr. Weinberg: We make the additional objection to this affidavit on the ground that Mrs. Ashworth is not named in the complaint and on the ground that if she was discharged she was discharged before the date of the passage and approval of the National Labor Relations Act.

Trial Examiner Perring: That is the same basis as the objection to Exhibit 18, and the affidavit will be received on the same basis as Exhibit 18.

Mr. Wirin: In explanation of that affi- 1003
davit I will not repeat what I said with respect to the affidavit of Farley Holder, but the same explanation applies.

Board's Exhibit No. 20 for identification is the affidavit of Archer Brock.

(The paper referred to was marked for identification Board's Exhibit No. 20.)

(Board's Exhibit No. 20 is as follows:)

ARCHER BROCK, 1018 Porter Street, Rich- 1004
mond, Virginia, a witness for the complainant, deposes as follows:)

He started at the Friedman-Harry Marks Clothing Company in 1932, pressing waist-bands. Five worked on that operation; Brock was the oldest employee on the floor. He was frequently asked to do specials and samples by Huffman, the foreman. The work of the other seam pressers was frequently examined, but Brock's work was not. There were occasional complaints during the time he worked there about the quantity of his work but never any 1005
complaints of its quality. The entire crew was on piece work in May 1935, and two of the crew got more than their share of the work by coming in early in the morning and picking out the choice work.

During the first week of July, he stopped Keevie Marks, an officer of the corporation, and told him he and several other workers had been getting Union literature and Union organizers had been

calling at their homes. The following conversation
1006 ensued:

Mr. Marks, replying: Yes, everybody up here has been getting that stuff. But all of you better stay away from those meetings. All the Union wants of you is that 50c a week dues. . . . If we hear of your going to those damn meetings, you are going to get fired. What did the Union do for those people at Hopewell?

Mr. Brock: Nothing, but just ruin the city.

Mr. Marks: Damn if it won't ruin you all, too, because we have a great big plant in Baltimore
1007 waiting to go any time we want to move there, and that's what we are going to do if they start any damn Union stuff down here.

After Mr. Keevie Marks walked a short distance away, he turned around and came back and said:

Mr. Marks: I tell you what I would like to have you do, though. I heard they are going to have a meeting over on the South Side next week. I would like you to get up a whole gang of boys and go over there and wreck the damn place. Bang on the seats, boo them, stamp upon the floor. You had better let me know who is going, because if I
1008 catch any of you all over there that I do not know are going, you are going to get fired and I don't mean maybe. I don't mind your going if you go and then come back and tell me exactly what they are going to do.

He joined the Union July 18, 1935, and attended one meeting before his discharge on August 2nd, 1935, and was active in getting new members.

He refused to sign a petition which was presented to him by Miss Alice Gibson on August 1, 1935,

during working hours. He identifies a paper as a copy of the petition that was presented to him, and it is marked Exhibit Two. At the time she presented the paper to him, he said that he was not going to sign anything but his pay check, and she replied that he wouldn't be signing that long. About 1:30 of that day before the petition was presented to him, he saw Miss Alice Gibson, a sewing machine operator in the Pants Department, and Mrs. Alma Muck, who fills in and teaches new girls, pass his machine and go downstairs to the first floor where the Company's main office is located. Five minutes later they returned carrying sheets of paper which various employees in the Pants Department signed. He later recognized the sheet carried by Miss Gibson as a petition in the form of Exhibit Two. While circulating the petitions, he heard Mrs. Gibson argue against the Union and heard her say to one worker, "If you joined, you won't work half the time." On August 2, 1935, at about 3:45 P. M. Huffman said, "I am going to lay you off for awhile." Brock asked, "What's this for?" Huffman answered, "The rest of the fellows on your job are making $20.00 and $26.00 a week and you are only making around $14.00 a week." Brock said, "The reason for that is that you know last week my iron was broken from 11:45 A. M. until 4:00 P. M. on Monday and you sent me home last Friday about 9:00 A. M., because there was not enough work for all of us."

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On August 16, 1935, he returned to the plant and asked November for his job. November said, "Well, we had not intended laying you off permanently. It was just a matter of a week or so, because there was no work. Then you went to the

Union and signed this paper saying that we laid
1012 you off because you didn't sign this petition." About two weeks before his lay-off, Lane started working in the crew. After the lay-off of Lane and Brock, Murdock, not a Union member, and C. Presser, not a Union member, were put on the crew. Both these men were put on during the week after Lane was discharged.

(Signed) Archer L. Brock.

Subscribed and sworn to
before me this 11th day
1013 of November, 1935.

W. J. Griggs,
Notary Public.
My Commission Expires June 7th, 1936.

Mr. Wirin: Then we offer Board's Exhibit No. 21 for identification the affidavit of Robert L. Koch.

(The paper referred to was marked for
1014 identification, Board's Exhibit No. 21.)

(Board's Exhibit No. 21 is as follows:)

1015

ROBERT L. KOCH, 1809 Auburn Avenue, Richmond, Virginia, a witness for the complainant, deposes as follows:

He started work at the Friedman-Harry Marks Clothing Company July 10, 1935, pressing seams. Five worked on that operation; one of the five started a month before Koch and one a week before him. The other two had been there longer. There was one minor criticism of his work by Preston Crowder, a straw boss; others on the operation were frequently given entire bundles to re-press. 1016
About August 1, 1935, Huffman, foreman, threatened to fire Aubrey Holder if he did not do his work better.

He joined the Union July 30, 1935. He attended the meetings and had been active in getting new members. He refused on August 1, 1935, to sign a petition in the form of Exhibit Two when it was presented to him by Mrs. Alma Muck. Before presenting it to Koch, Mrs. Muck offered it to Arnold Holder, who said, "I won't sign because it isn't justice. The whole paper is nothing but a 1017
bunch of lies. The Company is not living up to the N. R. A." He said, "One time I got in Dutch by signing a note and had to pay it, and I won't put my name where it don't belong no more." Mrs. Muck took the statement and went straight towards the main office. About five minutes later Huffman came up to Arnold Holder, who was employed on the same operation, and began talking to him. Koch went over to listen to the conversation. Huffman said to Holder, "Why are you not satisfied with

what you are getting? If you are not satisfied
1018 with what you are getting, why don't you quit?"

On August 7 Koch attended a Union meeting and on the next day Huffman made his first complaint about Koch's work. On August 14, 1935, Huffman picked up a pair of pants which Koch had just pressed, turned around and rumpled up the leg seams. He showed the seams to Koch and said, "You are not getting the seams down good." Throughout that day Huffman had been watching the pants that Koch had pressed with unusual care. On August 16, 1935, he was told by Huffman, "I will have to let you go for awhile. I have got to
1019 bring one of the other pressers from the big out-presser back on this work."

Of the five men employed on this operation, three were Union men and two non-Union. During the week immediately prior to the week of his lay-off, Koch had been paid at the rate of $1.10 per hundred, as had the others. During the week of his lay-off, the Union men were paid $1.00 per hundred, and the non-Union men $1.10 per hundred, according to the checks they received, which Mr. Koch saw. At a conference among the National Director of the Labor Board, Morton Marks, Huffman, and
1020 Koch on August 22, 1935, Koch accused Huffman of deliberately ruffling the trouser seams and Huffman did not deny this. No others were discharged at the same time as Koch. Another man from an out-presser was put on his job. A non-Union man was taken on in the place of the employee who was moved from the out-presser to Koch's work.

(Signed) Robert L. Koch.

Subscribed and sworn to
before me this 11th day
of November, 1935. 1021

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Next in order is the affidavit of Wilson Lane, which will be Board's Exhibit No. 22 for identification. 1022

(The paper referred to was marked for identification, Board's Exhibit No. 22.)

(Board's Exhibit No. 22 is as follows:)

WILSON LANE, Box 98, R. F. D. #1, Dumbarton, Virginia, a witness for the complainant, deposes as follows:

He started work at the Friedman-Harry Marks Clothing Company in July 1932 and worked to July 1934, as a waistband presser. He was laid off on account of slack work in July 1934, and went back to work at the plant about the beginning of July as a waist-band presser. There were no complaints of his work. There were five who worked pressing waist-bands, and Lane was the most recently hired waist-band presser if his former experience is not included. Counting his former work 1023

at the plant, he was the second oldest man on that
1024 operation. He did not work at the plant on the day that the petition was circulated, and, therefore, did not sign it. He joined the Union on August 2, 1935. He had attended all but two meetings which were held weekly, and had been active in getting new members for the Union. On August 21, he attended a Union meeting; at the close of the meeting Morton Marks was recognized outside of the building by some of the employees.

On Friday, September 6, 1935, Huffman, his foreman, told him that he did not have enough work for all of the pressers and that Lane would have
1025 to take a vacation, and told him to come back on September 13. On September 13, he returned and the following conversation occurred:

Huffman: Lane, you can't talk to the pressers while they are working.

Lane: I came for my check.

Huffman: I don't know whether it is ready or not. You can find out downstairs.

Lane: How about putting me to work?

Huffman: I will give you work when I have it.

Lane: Wasn't my work satisfactory before?

Huffman: Go downstairs, and if your check is
1026 ready, you can get it.

On the Monday after his lay-off, Murdock, not a Union member, was transferred to his place. Lane saw Murdock at work on his machine when he went in for his check.

(SIGNED) Wilson Lane.

Subscribed and sworn to
before me this 11th day
of November, 1935. 1027

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Board's Exhibit No. 23 for identification is the affidavit of Bryce Williams. 1028

(The paper referred to was marked for identification, Board's Exhibit No. 23.)

(Board's Exhibit No. 23 is as follows:)

BRYCE WILLIAMS, 11 West 30½ Street, Richmond, Virginia, a witness for the complainant, deposes as follows:

He started work at the Friedman-Harry Marks 1029
Clothing Company, January 22, 1935, as an off-presser and vest man. There were no complaints of his work. Four were employed on that operation, and Williams was the second in point of seniority among the four. He refused to sign a petition in the form of Exhibit Two that was circulated to him by Tucker, a button-hole machine operator, on August 2, 1935, on the ground that he would sign nothing but his pay check. On the following

day Chafnas asked, "Why?" Williams replied that
1030 he would not sign anything. He joined the Union on August 5, 1935, and attended seven meetings prior to his discharge. He was active in persuading employees to join the Union. On September 19, 1935, he was laid off by Chafnas, his foreman, with the following conversation:

Chafnas: Did anybody ever knock you in the head and apologize at the same time?

Williams: What do you mean?

Chafnas: Well, that is what I have got to do now; I have got to lay you off. The whole ten
1031 months that you have been working with me, I have never had any disagreement with you, except one time I did do you a dirty deal.

I just can't tell you the reason that I am letting you out, but you can trust me. Personally, I'll do everything I can to get you back up here. You have to take orders from me, and after all I'm nothing but a foreman. There are two ways of telling you to go; I could tell you to get the hell out of here, and I can tell you that you are laid off in a nice way. Your work has always been satisfactory, and I have never found anything wrong with
1032 your work like I have the others. I hate for things to come up like this. All that is left for me is to get drunk.

Bryce: I thought I'd be here longer than Irving Parr would. (Parr, an off-presser and Edwin Cramer, an off-presser, were both employed after Bryce. Parr had worked at Friedman-Harry Marks Clothing Company before, but it was necessary for him to quit to serve a jail sentence. Bryce was employed before Parr got his job back.)

Chafnas: We won't discuss Irving Parr now. This is your case. 1033

On September 27, 1935, he returned for his check and the watchman handed it to him at the door and refused to allow him to go into the building.

(SIGNED) Bryce Williams.

Subscribed and sworn to
before me this 11th day
of November, 1935.

W. J. Griggs,
Notary Public. 1034

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Board's Exhibit No. 24 for identification is the affidavit of Mrs. Luella Nichols.

(The paper referred to was marked for identification, Board's Exhibit No. 24.) 1035

(Board's Exhibit No. 24 is as follows:)

Mrs. Luella Nichols, 1828 Carrington Street, Richmond, a witness for the complainant, deposes as follows:

She started work at the Friedman-Harry Marks Clothing Company in 1928, felling collars. There

were no complaints of her work and she was fre-
1036 quently put on the specials and samples which demand more skilled work. She did not sign a petition in the form of Exhibit 2 which was offered her for signature on August 1, 1935 by Bill Daniels, a sub-foreman. Mrs. Nichols became a member of the Amalgamated Clothing Workers of America on August 21, 1935 and had attended meetings. She attended a union meeting on August 21, 1935. On August 22, 1935 Morton Marks came up to her at about 9:30 and said "Can I talk to you in a low voice? I thought you were my friend." Mrs. Nichols
1037 said, "I am. What's the matter?" Marks said, "I thought you were against the union." Mrs. Nichols said "I don't know much about the union, only what I hear. I never worked in a union shop." Someone interrupted the conversation at this point.

On September 9, 1935 the pay of several of the finishers was short. Mrs. Nichols suggested to Inez Greene, a finisher whose pay was short, that she join the union. Inez Greene left and talked to Bill Daniels and in about fifteen minutes November, superintendent of the plant, told Mrs. Nichols not to come in before five minutes of eight.
1038 It had been customery for her to come in before eight o'clock. About an hour after this conversation a fireman employed in the plant remarked: "I saw your boy going home. What is he going home for?" Mrs. Nichols replied, "I suppose because he joined the union. That's all right, they're going to get them." After lunch November sent for Mrs. Nichols. Morton Marks, an officer of the corporation, and November took Mrs. Nichols aside. November said, "What do you mean by saying that

you're going to get us?" Mrs. Nichols replied, "I didn't say that I was going to get you. I said they were going to get you." Morton Marks said, "You said it because we sent your boy home. Do you know why we sent him home?" Mrs. Nichols answered, "I didn't know they had sent him home until Edlow (the fireman) told me and I don't know why. If you're going to send me home I don't care." November said, "Get your things and get out of here, then." Mrs. Nichols said, "I never have been sent home for bad work." But November interrupted to say, "I don't want to hear that story." 1039

About thirty were employed on Mrs. Nichols' operation and she was almost the oldest from the point of seniority. Three persons were dependent on her. 1040

(SIGNED) Mrs. Luella Nichols.

Subscribed and sworn to before me
this 20th day of November, 1935.

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936. 1041

(SEAL)

Mr. Wirin: Board's Exhibit No. 25 for identification is the affidavit of Dorothy McAden.

(The paper referred to was marked for identification, Board's Exhibit No. 25.)

(Board's Exhibit No. 25 is as follows:)

1042

DOROTHY McADEN, 105 North Harrison Street, Richmond, Virginia, a witness for the complainant, deposes as follows:

She started work at the Friedman-Harry Marks Clothing Company in June 1932, as baster and under-collar worker, which is a skilled operation. She always made her average and there were no complaints of her work. Four worked on that operation, two regular and two extra. At the time of her discharge all four were working regularly. Another

1043 Union member was the oldest on the job and she was second in seniority. Two of the girls, non-Union members, had been only recently hired, and were less efficient than she.

A petition in the form of Exhibit Two was offered to her on August 1, 1935, by Rena Balducci, the forewoman that assisted at her table, and said that it would be better for them later on if they signed it. She joined the Union in the early part of July, had attended all the meetings and had made calls.

1044 On September 5, 1935, she called on Mr. and Mrs. Purdy. On the following morning she saw Mrs. Purdy talking to Rena Balducci. That same morning Balducci said Mrs. Purdy told her that she (Miss McAden) had been organizing on the night before. At the close of the conversation with Mrs. Purdy, Rena Balducci came over to Mary Mitchelle, who works at the same table as Miss McAden, and asked her if she had joined the Union. Miss Mitchelle said she had not; that her job meant too

much to her. Balducci then called McAden over and said, "Why have you turned against the Company and joined the Union? At first you wouldn't have anything to do with the Union people; now, we have the report that you never miss a Union meeting and have joined. It is certainly going to lower you in the estimation of the firm by joining the Union. It is going to hurt you a lot in the factory." Thereafter every coat that Miss McAden made was inspected by Balducci, although the coats of the others on the table were not inspected. After lunch Mrs. Purdy came and asked Miss McAden what the name of the organizer was whom she brought to her house; Miss McAden told her and Mrs. Purdy went over and talked to Balducci, November, superintendent of the plant, and Leight, foreman of her department. 1045 1046

On the night of September 9, 1935, Miss McAden called on Mrs. Duck. As she came into work the next morning, she passed Balducci and Leight, who were talking together, and heard Balducci say, "The only way to stop it is to get rid of her." Shortly after Mrs. Duck, who worked on a machine near by, said in the presence of Leight, that Miss McAden and an organizer had called on her last night and she shut the door in their faces." About fifteen minutes after this, Leight rushed over to Miss McAden and said, showing her a coat, "We have been having trouble with the undercollars and this one is basted too low." He called Mr. Styles, an inspector, who asked to see the coat. Leight refused to show it to him, said to Miss McAden, "You go home. You people are working spite work. Go home." Miss McAden asked to be 1047

allowed to identify the coat and Leight refused.
1048 Her sister, Lena McAden, was put on her job within ten minutes of the time she was discharged. No one else was discharged at this time.

About three weeks before discharge all the under-collar basters were called into Leight's office. Leight said there had been trouble with the under-collars. Miss McAden said there were five of them basting under-collars, and November, who was present, "You see, Leight, there is your trouble. You have got three new girls on a skilled operation." November then turned to Miss McAden and the oldest
1049 collar baster and said, "You go back to work;" he ordered the new girls to report to Styles, the inspector, for instruction in basting.

(SIGNED) Dorothy McAden.

Subscribed and sworn to
before me on this 11th day
of November, 1935.

W. J. Griggs,
Notary Public.

1050 My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Board's Exhibit No. 26 for identification is the affidavit of Mrs. Doris Koch.

(The paper referred to was marked for identification, Board's Exhibit No. 26.)

(Board's Exhibit No. 26 is as follows:)

1051

Mrs. Doris Koch, 1809 Albany Avenue, Richmond, Virginia, a witness for the complainant, deposes as follows:

She started working at the Friedman-Harry Marks Clothing Company on February 8, 1934 as a pocket raiser. There were no complaints of her work. She and one other were employed on that operation. The other had worked longer in the plant than Mrs. Koch. She joined the Amalgamated Clothing Workers of America on July 30, 1935, attended all the meetings thereafter, had been active in soliciting new members, and had called at the prospective members in their homes.

1052

Until September 9, 1935 work on her operation was shared; when work was slack other employees of her operation were laid off. On September 9th she was laid off for a day by Morris Huffman and was told that work was slack. She was later told by other employees of the plant that a "filler in" was called in to do her work the day she was out. On September 13th she was again laid off for a period of two days and the other girl on her operation continued working. The other girl is not a union member.

1053

(SIGNED) Mrs. Doris Koch.

Subscribed and sworn to before me
this 31st day of Nov. 1935.

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Board's Exhibit No. 27 for
1054 identification is the affidavit of Reba Holder.

(The paper referred to was marked for identification, Board's Exhibit No. 27.)

(Board's Exhibit No. 27 is as follows:)

REBA HOLDER, 2407 East Grace Street, Richmond, Virginia, a witness for the complainant, deposes as follows:

1055 She started work at Friedman-Harry Marks Clothing Company in 1928, on a button-sewing machine, and was laid off after six weeks because work was dull. After a short period of work in 1929, she returned in 1930 and stitched corners. Three worked on that operation, and Miss Holder was the oldest in point of seniority. There has been no complaints of her work.

A petition in the form of Exhibit Number Two was presented to her August 1, 1935, by Mrs. Alma Muck, who told her to read it. Miss Holder refused to sign, and Mrs. Muck said, "Do you expect
1056 the Union to do more for you than the Company?" She joined the Union on July 22, 1935, and attended thirteen meetings before her discharge, and was active in persuading girls to join the Union.

A petition similarly worded was circulated in the plant in the summer of 1933. On September 26, 1935, Miss Holder was laid off for a day and a half, and the other two girls remained working. During the week of September 16, 1935, Mrs.

Margaret Easley, a relative of Wilford Huffman, the foreman, told Woodrow Holder in Miss Holder's presence, "It did not do you any good to join the Union. You are laid off anyhow." Another girl on the same operation said, "I didn't know Woodrow belonged to the Union." Mrs. Easley said, "Oh, yes. Woodrow, Reba, and Sue Owen, all belong to the Union." 1057

On October 25, 1935, Miss Holder was laid off by Wilford Huffman, foreman of the Pants Department, who said, "There are too many on that operation. You are the only one who is not satisfied," which he repeated several times. Miss Holder has heard that a non-Union girl has been put on her operation. 1058

(SIGNED) Reba Holder.

Subscribed and sworn to
before me this 11th day
of November, 1935.

W. J. Griggs,
Notary Public.

1059

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Board's Exhibit No. 28 is the affidavit of Sarah Sheffield.

(The paper referred to was marked for identification, Board's Exhibit No. 28.)

(Board's Exhibit No. 28 is as follows:)

1060 SARAH SHEFFIELD, 3321 Delaware Avenue, Richmond, Virginia, a witness for the complainant, deposes as follows:

She was employed by the Friedman-Harry Marks Clothing Company in January 1934, pulling threads off of pants. In June 1935, she was transferred to serging fronts. Four wer eemployed on that operation. She was the youngest in the plant and on that operation in point of seniority, except for one girl who had been previously employed at
1061 the plant, quit and was then re-hired. There were two Union members on that operation. She joined the Union on July 19, 1935, and attended seven Union meetings before her lay-off.

Prior to the time when she joined the Union, the four girls shared work equally; about the beginning of August the other Union member and Miss Sheffield were laid off, while the other two girls who were not Union members continued working.

She at first refused to sign a petition on August
1062 1, 1935, in the form of Exhibit Two, which was presented to her by Alice Gibson. The only complaints of her work were during the first week or two that she serged fronts.

On September 18, she was laid off by Morris Huffman and told that work was slack. She has been told that Nellie Beadles, who told Miss Sheffield on the day of her discharge, that she was not a Union member, has taken her place. Since the NRA was declared unconstitutional they have been

required to work as much as six hours per week over time without pay. 1063

(SIGNED) Sara Sheffield.

Subscribed and sworn to
before me this 11th day
of November, 1935.

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936. 1064

(SEAL)

Mr. Wirin: Board's Exhibit No. 29 is the affidavit of Mrs. Maggie High.

Mr. Green: In the case of the affidavit of Mrs. Maggie High, in addition to the general objection and motion there is the specific fact that Mrs. Maggie High is not named in the complaint, and we make the specific objection to her affidavit and the same specific motion with respect to her affidavit.

Trial Examiner Perring: It will be handled in the same way as the others. 1065

Mr. Green: We ask that the same exception be noted.

Trial Examiner: Perring: An exception will be noted.

(The paper referred to was marked for identification, Board's Exhibit No. 29.)

(Board's Exhibit No. 29 is as follows:)

1066 MRS. MAGGIE HIGH, 117 East 37th Street, Richmond, Virginia, a witness for the complainant, deposes as follows:

She was employed by the Friedman-Harry Marks Clothing Company in June 1931, as a button sewer. There were seven on that operation, and she was the oldest in point of seniority, and was in charge of her table. Two months after she was employed there, she started teaching new girls. There have been no complaints of her work and she did prac-

1067 tically all the sample work.

On August 1, 1935, Mrs. High was out sick. She returned on August 5, 1935. During the week of August 5, Mrs. High heard Tucker, an employee of the Company as a button-hole machine operator, say to Walter Starkey, an off-presser, "Do you know how many of these people up here belong to the Union?" Starkey said, "I don't know but one", and pointed to the presser next to him, Bryce Williams, "but maybe all these women folks around here belong."

1068 On August 12, 1935, she received a phone call, and someone who refused to give his name said. "You are going to be fired for not signing that paper up to where you work." On August 14, 1935, she asked Jack Chafnas, her foreman, if he knew anything about the phone call. He said he did not. She said she thought the Union was a good thing, and that she had attended Union meetings. Chafnas said, "Since you have told me you went, I can talk to you better. Why do you go to the meetings?

If they find it out downstairs, do you know what will happen?" She said, "I feel like that is my 1069
own business. When I came here to work, I did not sign an agreement with Mr. Marks or Mr. November or with anyone else as to what I would do or as to where I would go when I left the shop." Chafnas said, "That is true, Mrs. High, but you are going against the Company." And asked her not to go to the meetings. He said, "You need your job and I need you. Are you going to any more meetings?" And he said, "If they find it out downstairs, they won't tell you, but some morning I will come around and start doing this to your 1070
work," at the same time making a tearing motion with his hands.

During the week after September 19, 1935, Mrs. High saw all three of the employees who worked with Bryce Williams working and observed that there was more work after his discharge than there was before. Lee Atkinson, a non-Union man, a seam presser and serger, was put on William's job at various times during the week after William's discharge.

On October 25, 1935, she was laid off by Chafnas, foreman of the Vest Department. The following 1071
conversation ensued:

Jack Chafnas, (calling Mrs. High aside as she was leaving work on Friday, October 25, 1935): Mrs. Maggie High, it has come.

Mrs. High: All right, Jack, what about it?

Jack Chafnas: I don't need to do a lot of explaining, you understand.

Mrs. High: Yes, I do, and I have nothing to regret or to be sorry for. Since I have been here I

have tried to do the work the best I could and
1072 to give satisfaction. I know it is not my work why I am being fired.

Jack Chafnas: Mrs. High, you are not being fired. You know the work is slow.

Mrs. High: Yes. But that is not the reason you are doing this. I have seen enough to know if it was for slow work, I would be the last to be laid off, as it has been that way ever since I have been here. Jack, you can't fool me. I know that you have been fighting against this for several days.

Jack Chafnas: What makes you think so?

1073 Mrs. High: Because Mr. November was up here yesterday. And today you all had an argument.

Jack Chafnas: Mrs. High, I didn't say so.

Mrs. High: I know you didn't say that; I don't expect you to say so, but I know plenty and if this comes to a show-down, I expect to tell all I know, but understand I am going to tell the truth.

Jack Chafnas: You wouldn't mention what I say?

Mrs. High, (hesitating and then saying): Jack, you know you are discriminating against me. I have this right as an American citizen.

1074 Jack Chafnas: Mrs. High, I am not discriminating against you. I have nothing to say against you. If it comes to that I have nothing but the highest respect for you.

Mrs. High: Jack, I am not speaking of my character; I am speaking of my Union activities.

Jack Chafnas: All I ever said to you was about eight weeks ago. I told you, you would be laid off for Union activities in the shop.

Mrs. High: Have you seen me going around

from one machine to the other, or heard me talking about the Union? 1075

Jack Chafnas: No, I have not. Do you think I am one of the firm?

Mrs. High: No.

Jack Chafnas: Then I am working here the same as you.

Mrs. High: Yes, Jack, but I am employed under you. You don't have to lay me off without a cause.

Jack Chafnas: Mrs. High, I am working here the same as you.

Mrs. High: Jack, if you got fired taking up for me, you would get fired for Union activities, too. 1076

Jack Chafnas: Then what will I do? Is the Union going to pay me my salary? No.

Mrs. High: Well, Jack, you won't tell me what Mr. November gave you orders to fire me but he is superintendent, he should know all about it. I am going down and talk to him. I don't expect him to tell me the truth.

Jack Chafnas: I would go down and talk to November. I think you are due an explanation.

Mrs. High: (starting down when Mr. November enters the department where she and Jack Chafnas were): Mr. November, I want to see you. 1077

Mr. November: You want to see me?

Mrs. High: Jack says he is laying me off and I would like to know what it is for.

Mr. November: Ask Jack. He is laying you off, he should know.

Mrs. High: Jack says it is for slow work. I am the oldest one, I think I should be the last to go.

Mr. November: I don't know. Ask Jack; he is your boss.

Mrs. High: I know, but you hired me.

1078 Mr. November: I hired you? How long have you been here.

Mrs. High: I have been here around five years.

Mr. November: I must have picked a good worker.

Mrs. High: Well, if I am a good worker, why am I being laid off? First, I would like to know when I am coming back.

Jack Chafnas: November, you know the work is slow. We are not working any more until Wednesday.

1079 Mrs. High: Well, if you won't tell me when I am coming back, I consider I am being fired, and I want my check.

Mr. November: Oh! You want your check. Give her her check, Jack, give her her check.

On October 24 and again on October 25, Mrs. High observed November and Chafnas engaged in an argument, and overheard November say, "I know it to be a fact."

Mrs. High attended all the Union meetings except two before her discharge. She has called on other employees and has spoken at Union meet-

1080 ings. She was among the most active Union members in the plant. Mrs. Hicks, a Union member and the youngest in point of seniority, was the only other one laid off on the same day as Mrs. High.

(SIGNED) Mrs. Maggie High.

Subscribed and sworn to
before me this 11th day
of November, 1935.

W. J. Griggs,
Notary Public.

Mr. Wirin: The next exhibit, being Board's Exhibit No. 30 for identification, is the affidavit of Sylvia Johnson. 1081

Mr. Green: In the case of Sylvia Johnson, in addition to our general objection and motion we make a specific objection and motion on the ground that she, also, is not named in the complaint, and we ask that our exception to the ruling of the Trial Examiner be noted.

Trial Examiner Perring: The same action. 1082

(The paper referred to was marked for identification, Board's Exhibit No. 30.)

(Board's Exhibit No. 30 is as follows:)

SYLVIA JOHNSON, 312 West Grace Street, Richmond, Virginia, a witness for the complainant, deposes as follows:

She was employed by Friedman-Harry Marks Clothing Company on January 2, 1935, stitching side pockets. There were seven on that operation, and Miss Johnson was fourth in point of seniority. There had been no complaints of her work. In the latter part of June, 1935, after the church meeting, Morton Marks was discussing the meeting with Miss Johnson and a group of girls. He said, "I will fire every damn one that attends the Union meeting. If they do not have any more confidence in me than that, I will not work them." 1083

Alice Gibson presented a petition to her on
1084 August 1, 1935, in the form of Exhibit Number Two, and told her to sign it. She refused to sign it and Mrs. Gibson went over to Huffman. She returned and said, "Mr. Huffman said to sign it or else," and she then signed.

About the beginning of September, a girl went around taking names and addresses of those employed in the plant. Katherine Hutchinson, in the presence of Keevie Marks and Miss Johnson, said, "Be sure and sign 'Union' to her name." Miss Johnson said, "Yes, and I am proud of it."

1085 On September 4, 1935, Katherine Hutchinson said, "I will get $22.50 a week whether I work or not," in the presence of Miss Johnson. One of the girls asked her, "Why?" She said, "Reporting. I have a right to attend Union meetings, and will attend them and report every face I see there." During lunch time, Katherine Hutchinson went into the office and after lunch met Miss Johnson and Doris Koch, another Union member, and said, "There are two God damn sons of bitches, cannot do their talking in the factory, and it is a damn shame that they come in and make money to buy
1086 bread and butter and then work against the firm. Up until now, I have been afraid, but now I have someone to back me, and I have been told to say anything I want to them, and if they say anything back to me, to take their glasses off and slap hell out of them." Miss Johnson and Miss Koch both wear glasses. About this time Morton Marks said, in the presence of Miss Johnson, "If the Union gets the upper hand of me, I will move my plant away from Richmond." Katherine Hutchinson

asked if she could go along and he said, "Yes, I'll take anybody that does not belong to the Union." 1087
Marks and Hutchinson are in frequent conversation in the plant since the organization activities started.

Miss Johnson joined the Union on August 24, and was the only Union member on her operation. She attended about eight Union meetings.

On October 16, Miss Johnson called November, superintendent of the plant, because she had received a telegram that her uncle had died. She asked November where she could get Huffman; November told her to go on home and he would deliver the message to Huffman. 1088

On Monday, October 21, 1935, she returned to work. She found the plant was not working and went down to get her check, on which was a note saying, "Mr. Huffman will send for you when he needs you."

On Wednesday, October 23, 1935, she saw November and Morton Marks. In a private conversation between Miss Johnson and November, she said, "Mr. November, you recall the night a week ago that I called up at your residence and asked how I could get in touch with Mr. Huffman? I didn't ask your permission to go home, but you told me 1089
I might go. I came back Monday, and Mr. Huffman said he didn't know why I had been out. I got my check, and this (showing the slip of paper) was pinned to it." November took the slip of paper and said, "That is not the reason we laid you off." Miss Johnson said, "I realize that work has been slack but we have been sharing alike. The others on my operation are going back to work this morning." November said, "Did you read the note that was pinned on your check? Well, that's all I have

to say." Miss Johnson then asked that November
1090 explain to Huffman. November did this and said, "That is not the reason that she has been laid off." As she left she saw Morton Marks, who said, "Its not any use of your keeping on coming back up here. We usually send for the employees when we need them." No others have been laid off on her operation.

(Signed) Sylvia Johnson.

Subscribed and sworn to
before me this 11th day
of November, 1935.

1091

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Next is the affidavit of Mrs. Annie Rogers—

Mr. Green: In the case of Mrs. Annie Rogers she, also, is not named in the com-
1092 plaint, and we make the same specific objection and the same specific motion in addition to our general objection and a general motion, and ask that an exception be noted.

Trial Examiner Perring: The same action.

Mr. Wirin: That will be Board's Exhibit No. 31, for identification.

(The paper referred to was marked for identification, Board's Exhibit No. 31.)

(Board's Exhibit No. 31 is as follows:)

1093

MRS. ANNIE ROGERS, 3315 East Marshall Street, Richmond, Virginia, a witness for the complainant, deposes as follows:

She started work at the Friedman-Harry Marks Clothing Company at the beginning of 1933, as an inspector of pants. There were no complaints of her work. Six were employed on that operation, and four of them were Union members.

On August 1, 1935, a petition was presented to them by Alma Muck for signature. Alma Muck told them to, "Go ahead and sign," and asked, "What has 1094
the Union done for you?" Four of the six were Union members and refused to sign, but after consultation agreed to sign.

Mrs. Rogers was laid off on September 27, 1935, by Preston Crowder, section foreman of the department. At the time she was laid off, her work was piled up. She was told by Crowder at the time of the lay-off that work was slack.

On September 30, 1935, she returned to the plant to see Huffman, the foreman, who again told her that she was laid off on account of slack work. She 1095
went to see Morton Marks, president of the Company. During the conversation, Marks said, "Mr. Huffman knows nothing that I know about you and the Union. Someone told me that you had a meeting at your house on the Williamsburg Road. Several of your friends were there and signed up on the application card. Evelyn Mingee was one of them. You were the ring leader." Mrs. Rogers said, "Well, I came up to find out why I got laid off. I pretty much know now that the Union had some-

thing to do with it." Marks said, "Yes, and you
1096 can't help us feeling that way."

Mrs. Rogers was the third oldest in point of seniority on her operation. Another employee on that operation has told her that her place has been taken by Vici Reed, a non-Union girl, formerly employed as an extra hand in the department.

On August 13, 1935, Mr. and Mrs. Rogers had a meeting of a group of employees at their home, at which time some of the employees signed Union application cards.

(Signed) Mrs. Annie Rogers.

1097

Subscribed and sworn to
before me this 11th day
of November, 1935.

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936.

(SEAL)

1098 Mr. Wirin: The affidavit of Mrs. Annie Garnett is to be Board's Exhibit No. 32 for identification.

Mr. Green: In the case of Mrs. Annie Garnett, she is not named in the complaint and in addition to the general objection and general motion to strike out we make the same specific objection and specific motion, and ask that we be allowed an exception from the ruling of the Trial Examiner.

Trail Examiner Perring: The same action.

(The paper referred to was marked for

(Board's Exhibit No. 32 is as follows:)

1099

MRS. ANNIE GARNETT, 1929 Lakeview Avenue, Richmond, Virginia, a witness for the complainant, deposes as follows:

She was employed by the Friedman-Harry Marks Clothing Company during the first week in September 1931, as a trimmer in the Pants Department. Twelve were employed on that operation, and Mrs. Garnett was the second in point of seniority. There had been no complaints of her work. She signed the petition that was circulated to her by Alma Muck, who teaches new girls, on August 1, 1935. 1100

She joined the Union on August 5, 1935. She attended two Union meetings, but made no speeches and no calls.

On September 27, 1935, she was told by Tyler Coleman, who distributes work, to "Go home and stay a week."

On Friday, October 2, she returned for her check and was told by Huffman, foreman of the Pants Department, "When I need you, I will send for you."

On September 26, 1935, she was asked by Lilly Faulkner, an employee, if Madeline Clarke, a Union member, had attended the Union dance the night before. Mrs. Garnett replied, "No, Madeline has not been to any dances." Shortly after Mrs. Bessie Binns, a sister of Wilford Huffman, the foreman, came downstairs and talked to Mrs. Faulkner. Mrs. Faulkner then came over and told Mrs. Garnett, "You don't rate any more." 1101

Mrs. Alma Muck called on Mrs. Garnett at her

home on August 26, 1935, and asked if she intended
1102 to be loyal to Mr. Marks, and said that, "Everyone that joined the Union ought to be fired."

No one else on her operation was laid off at the time that she was.

She returned to the plant on October 23, 1935, and was told by Huffman, foreman of the Pants Department, "There's nothing to do this morning. I'll let you know when I need you." This was at 8:00 A. M., and several of the girls had already completed a considerable amount of work. Ordinarily work commences at 8:00 A. M. Under the Code they were required to make one hundred (100)
1103 pants to make the minimum; since the NRA was declared unconstitutional, this has been increased to one hundred twenty-five (125).

(Signed) Mrs. Annie Garnett.

Subscribed and sworn to
before me this 11 day of
November, 1935.

W. J. Griggs,
Notary Public.

1104

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: Board's Exhibit No. 33 for identification is the affidavit of Madeline Clarke.

Mr. Green: Madeline Clarke is also not named in the complaint and in addition to

our general objection and general motion we make the specific objection and specific motion to strike out. 1105

Trial Examiner Perring: The same ruling.

(The paper referred to was marked for identification, Board's Exhibit No. 33.)

(Board's Exhibit No. 33 is as follows:)

MADELINE CLARKE, 2010 West Cary Street, Richmond, Virginia, a witness for the complainant, 1106 deposes as follows:

She was employed by the Friedman-Harry Marks Clothing Company in the spring of 1931, as a buttonhole machine operator in the Pants Department. There had been no complaints of her work. There were two employed on her operation. The other one was not a Union member, and had been employed there about six years.

A petition was presented to her on August 1, 1935, by Alma Muck, who teaches new girls. She was told to sign the petition, and did so. 1107

On September 27, 1935, she was laid off by Morris Huffman, foreman of the Pants Department. She was told to stay out a week. On the following Friday, October 4, 1935, she returned to get her check. As she was entering the plant, Morton Marks, president of the Company, called her to him and said, "Why did you join the Union?" Miss Clarke said that she had not joined the Union. Marks said, "I heard that you had joined. Farley

Holder is bragging that he got your application.
1108 If you did not join, I am glad that you didn't. What is the Union going to do for you?" Miss Clarke joined the Union on September 25, 1935. On Friday when she returned for her check, she saw Mrs. Crowder, wife of the foreman of the pressers, working at her machine.

(Signed) Madeline Clarke.

Subscribed and sworn to
before me this 11th day
of November, 1935.

1109

W. J. Griggs,
Notary Public.

My Commission Expires June 7th 1936.

(SEAL)

Mr. Wirin: The next and last affidavit is not the affidavit of a person discharged—

Trial Examiner Perring: Just a moment. Off the record.

1110

(Discussion off the record.)

Mr. Wirin: This affidavit, which is to be Board's Exhibit No. 34, and to be the last exhibit, is not that of a person discharged or otherwise discriminated against. It is the affidavit of Gerhard Van Arkel. The record shows that no particular objection is being made to that, other than the objections heretofore specifically noted.

(The paper referred to was marked for identification, Board's Exhibit No. 34.) 1111

(Board's Exhibit No. 34 is as follows:)

Gerhard Van Arkel, 1432 Bankers Securities Building, Philadelphia, Pennsylvania, a witness for the complaint, deposes as follows:

He is the Regional Attorney for the Philadelphia Regional Labor Board. Pursuant to a charge filed by the Amalgamated Clothing Workers of America under the National Labor Relations Act, he made 1112
an investigation of the Friedman-Harry Marks Clothing Company, at Richmond, Virginia. On September 26, 1935 he conferred with Mr. Morton Marks, Mr. Keevy Marks and Mr. Greenberg, officers of the Company, and Mr. Irving November, Superintendent of the Company. In the course of the conference he raised the question of the case of Miss Sarah Sheffield, allegedly laid off because of her membership in the Amalgamated Clothing Workers of America, Willford Huffman, foreman of the pants department, was called in and asked
the reason for her dicharge. He denied that it was 1113
because of her union membership and stated that she was merely laid off. Morton Marks thereupon said, "She may have been laid off before, but she is discharged now, running down there and causing all this trouble." During the conference Morton Marks said that labor difficulties in the plant had seriously curtailed their production; that they had run 84,000 units in the spring and would be lucky to run 60,000 units during the fall; that one large

buyer in the West had refused to give them an
1114 order of 30,000 units on the ground that he had heard a strike was impending in the plant and was not sure that the company could deliver the order. He further said that the petition which was circulated in the plant about August 1, 1935 had been presented to them by a committee of employees and that it was signed by about 96% of the 950 employees of the company and that it now remained in its possession. He stated further that the company had no part in the preparation or circulation of this petition.

1115 (Signed) Gerhard Van Arkel.

Subscribed and sworn to
before me this 25th day
of November, 1935.

Robert Wiser,
Notary Public.

My Commission Expires March 9, 1939.

(SEAL)

1116

Mr. Wirin: That concludes the evidence to be offered by the Board.

Trial Examiner Perring: Is there any evidence you care to offer, Mr. Weinberg?

Mr. Weinberg: The respondent has no evidence to offer.

Trial Examiner Perring: Is it the desire of counsel to have any argument in this matter before the Examiner?

Mr. Wirin: I should think that there is no need of argument, and we waive our right to argue the matter. We understand that there is another proceeding—we know that there is another proceeding pending before this Examiner which will be handled somewhat differently, at least in some respects, from the present one, which may take some time. We have no argument to offer and I would recommend, if counsel is so disposed, that such time as we have this afternoon be devoted toward the presentation and consideration of the other case rather than making argument. 1117 1118

I am sure the Examiner, as well as all of us, would like to hear Mr. Weinberg make a speech, but if we have to forego that we shall, and perhaps Mr. Weinberg can do the same.

Mr. Weinberg: We have no argument to make.

Trial Examiner Perring: Then the hearing will stand closed and we will take the matter under advisement, subject to the conditions that have been laid down here and agreed to. We will take a recess of a few minutes and then start in with the next case. 1119

(Whereupon, at 2:05 o'clock, p. m., December 5, 1935, the hearing in the above-entitled matter was closed.)

Board's Exhibit 1

1120 This exhibt consists of the Charge, Complaint and Notice of Hearing, Returns of Service, Designation of Examiner, Extension of Time for Filing Answer, Special Appearance of Respondent, Motion to Dismiss the Complaint, and Answer and appears printed herein at pp. 11 to 32.

Board's Exhibits 2 to 34

1121

These exhibits are all read into the record with the exception of "The Rules and Regulations of the National Labor Relations Board"; Charts introduced in evidence before the National Labor Relations Board" and a pamphlet entitled "Ten Years of the New York Clothing Manufacturers Exchange, Inc.," introduced as an exhibit, which are omitted pursuant to Order of the Circuit Court of Appeals.

1122

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD 1123

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC. *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. C-40

1124

Decision

STATEMENT OF CASE

On September 28, 1935, the Amalgamated Clothing Workers of America filed with the Regional Director for the Fifth Region a charge that the Friedman-Harry Marks Clothing Company, Inc., Richmond, Virginia, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On October 26, 1935, the Board issued a complaint against the Friedman-Harry Marks Clothing Company, Inc., hereinafter referred to as the respondent, said complaint being signed by the Regional Director for the Fifth Region and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (4) and Section 2, subdivisions (6) and (7) of the Act. In respect

1125

to the unfair labor practices, the complaint alleged,
126 in substance:

1. The respondent, by its officers and agents, terminated the employment of certain specified employees and laid off others for brief periods of time, all of said events occurring on various days after July 5, 1935, for the reason that each of said employees had joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, said acts being contrary to Section 8, subdivisions (1) and (3) of the Act.

127 2. The respondent, by its officers and agents, engaged in further unfair labor practices contrary to Section 8, subdivisions (1) and (3) of the Act by threatening to discharge employees for refusing to sign a petition expressing a feeling of loyalty to the respondent and a desire to be freed from the activities of union organizers, by threatening to discharge employees for refusing to sign a petition stating that they wished to withdraw from the Amalgamated Clothing Workers of America, and by requiring, as a condition of retaining employment, that certain employees withdraw their
128 membership in the Amalgamated Clothing Workers of America.

3. The respondent, by its officers and agents, terminated the employment of and refused to reinstate Sara Sheffield for the reason that she had filed charges under the National Labor Relations Act, said conduct on the part of the respondent being contrary to Section 8, subdivision (4) of the Act.

The complaint and accompanying notice of hearing were served on the parties in accordance with 1129
Article V of National Labor Relations Board Rules and Regulations—Series 1. The respondent, appearing specially, objected to the jurisdiction of the Board on stated constitutional grounds. Without waiving its rights under that special appearance, the respondent filed an answer to the complaint in which it admitted the discharges and lay-offs, but denied the allegations of violation and moved to dismiss the complaint. After adjournments on November 6, 1935, and November 12, 1935, a hearing was held at Richmond, Virginia, 1130
on December 5, 1935, by Henry G. Perring, the Trial Examiner designated by the Board, and evidence was taken. Counsel for the Board and the respondent had previously entered into a stipulation governing the introduction of evidence at said hearing whereby the Board was permitted to present its evidence in the form of written statements and affidavits which would stand as uncontradicted for the purposes of the record. The respondent admitted it had full opportunity to cross-examine and to present evidence on its part. As a result of this stipulation all of the evidence in the case 1131
consists of written statements, in large part under oath. The evidence is uncontradicted by the respondent. The respondent, choosing not to avail itself of its privileges under the stipulation, did not present any evidence, oral or written, on its behalf. The motion to dismiss was denied by the Trial Examiner. The Board affirms this ruling.

Thereafter, the Trial Examiner duly filed his Intermediate Report with the Regional Director. In said report, the Trial Examiner ruled that the

1132 evidence submitted for the Board was admissible and consequently overruled the various objections of the respondent, which were based generally upon irrelevance and immateriality. The Board affirms these rulings. He found that the respondent (a) by discharging Archer Brock, Robert L. Koch, Wilson Lane, Bryce Williams, Luella (Lula) Nichols, Dorothy McAden, Reba Holder, and Sara Sheffield, and by lay-offs of Mrs. Doris Koch and Arnold Holder, said discharges and lay-offs being made for the reason that each employee had joined and assisted the labor organization known as the Amalgamated Clothing Workers of America, hereinafter
1133 sometimes referred to as the union, has engaged and is engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act; (b) by discharging and refusing to employ Sara Sheffield because she had filed charges under the National Labor Relations Act has engaged and is engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivision (4) and Section 2, subdivisions (6) and (7) of the Act. No evidence having been introduced with respect to the cases of
1134 Mrs. Gertrude Holder, Margaret Turnstall, Hobert Holder, Mrs. Robert Binns, John Gall, Heywood Tunstall, and Floyd Chetty, the Trial Examiner dismissed the complaint as to these employees.*

The Trial Examiner recommended that the respondent cease and desist from its unfair labor practices and, in addition, offer reinstatement to the

* There were no allegations in the complaint respecting Mrs. Fagan, although she is mentioned in the charge.

discharged employees and pay to said employees and those laid off, respectively, a sum of money equal to the wages lost to them by virtue of the discharges and lay-offs. The respondent has not complied with these recommendations. 1135

Upon the entire record in the case, including the pleadings, the stenographic transcript of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. THE MEN'S CLOTHING INDUSTRY 1136

1. The men's clothing industry is among the twenty most important manufacturing industries in this country. It ranked in 1929, according to the U. S. Census of Manufactures, sixteenth in the number of wage earners employed, nineteenth in the value of its product and sixteenth in the amount of wages paid. In 1935 * there were more than 3,000 firms in the industry which employed approximately 150,000 workers in the manufacture of men's clothing. In addition to these workers, there are about 58,000 engaged in the manufacture of the fabrics from which the clothing is made and about 100,000 who are engaged in the wholesale and retail distribution of the manufactured men's clothing. The total value of sales in 1929 by the manufacturing plants in the industry was $833,242,000. 1137

* Unless the text indicates the contrary, the statistical statements in the findings of fact are based upon 1935 figures.

2. The various steps in the typical process of
1138 manufacturing men's clothing are as follows:

(a) The purchase, generally by specifications, of the raw materials—mainly woolen and worsted cloth, cotton and rayon, canvas, silesia, felt, hair-cloth, sewing materials and buttons;

(b) The sponging and shrinking of the cloth, after an examination to determine the proper method of so treating it;

1139 (c) The cutting of the cloth, linings, canvas and other materials according to schedules prepared on the basis of sizes, models and customer;

(d) The fabrication into separate garments, such as coats, pants and vests, of the cut materials through many sewing, basting and pressing operations;

(e) The assembly of these separate garments into completed suits, grouped according
1140 to customers' orders and, in some cases, having sewn on them the customer's label;

(f) The distribution of the garments to the manufacturers' customers, generally retailers; alteration of the garment by the retailer to fit it to the wearer and correction by the manufacturer of defects in returned garments.

3. Woolen and worsted cloth represent about 75 per cent of the total cost of raw materials. Much

of the raw wool is imported from foreign countries. The production of the domestic raw wool is concentrated in the Western States, over 70 per cent having been produced in that area in 1933. Texas, Montana, Wyoming, and California constitute the chief wool-producing States. But while the raw wool is thus produced mainly in the West, the manufacture of that wool into woolen and worsted cloth, known as men's wear fabrics, takes place largely in the New England States, so that there is a constant flow of raw wool across the country to the mills in New England. These mills in 1929 produced over 63 per cent of the total of men's wear fabrics. Such fabrics constitute the largest single item as respects both quantity and value of the product of the wool textile industry. 1141 1142

4. The bulk of the rayon fabrics used for linings is produced in New Jersey and Pennsylvania, whose combined production in 1929 exceeded 50 per cent of the United States total. In all, only fourteen States produce rayon fabrics. As these fourteen States are not similarly prominent in the list of States producing men's clothing, it is clear that there must be an extensive flow of this raw material in interstate commerce. For example, sixteen States and the District of Columbia, which accounted in 1934 for over 25 per cent of the garments cut, produced no rayon fabrics in 1929, while New York, which cut more than 46 per cent of the total of men's clothing cut in 1934, produced only 3.7 per cent of the total of rayon fabrics. 1143

5. As in the case of the wool and rayon fabrics, the areas of production of the other materials, such

as cotton fabrics, silesia for pockets, felt, hair-
1144 cloth, jute and hemp fabrics, bear no direct relation to the areas of production of men's clothing, so that a large amount of these materials must be transported to the latter areas.

6. Most of the sponging and shrinking, which is necessary to condition the fabrics for cutting, is performed in New York and Philadelphia for those firms which do not operate their own sponging plants. The cloth is generally shipped, after its purchase by the men's clothing manufacturer, from the mill to the sponging plant and then re-
1145 shipped to the manufacturer.

7. The principal operations after shrinking and sponging are cutting, sewing and pressing. All of these operations may be performed in one plant, but very frequently they are performed separately in plants located in different States. The term "inside manufacturer" is applied to establishments in which the entire manufacturing process is carried out in one place. The "contract manufacturer", on the other hand, purchases the cloth and, after sponging, cuts it in his plant but has the sewing
1146 and pressing performed by contractors to whom the cloth is let out on a piece rate basis. For the New York area, about 75 per cent of the goods cut are sent out to contract shops to be sewn.

50 per cent of the 3,225 establishments engaged in the fabrication of men's clothing are located in New York State; 95 per cent are located in eight States—New York (50.2 per cent); Pennsylvania (10.4 per cent); Maryland (10.2 per cent); New Jersey (5.9 per cent); Illinois (8.3 per cent);

Massachusetts (3.6 per cent); California (3.3 per cent); and Ohio (3 per cent). Since the men's wear fabrics are produced largely in the New England States, the goods must be transported from the mills across state lines to the fabricating establishments in the States listed above. 65 per cent of the total of suitings and pantings fabrics for men's wear produced in 1929—$175,379,000 in value—was produced in five New England States, Massachusetts, Rhode Island, Connecticut, Maine and Vermont. In these same five States, 74 per cent of the overcoating fabrics, or $23,371,000 in value, was produced. While the combined total of men's wear fabrics produced in these States was thus about $200,000,000, the value of men's clothing manufactured from these fabrics in the same States was only $35,000,000. It is thus apparent that the great bulk of the fabrics are shipped to manufacturing establishments in other States. 1147 1148

In respect to the cutting of the cloth, about 46 per cent is performed in New York; 11.72 per cent in Pennsylvania; 11.17 per cent in Ohio; 9.12 per cent in Illinois; 7.20 per cent in Maryland; 4.07 per cent in Massachusetts; and the balance in other States (based upon 1934 figures). In 22 States, no cutting is performed. But while the three States of New York, Ohio and Massachusetts in 1934 cut 61.57 per cent of the total number of garments cut, only 44.81 per cent of the man-hours worked in the men's clothing industry were worked in these States. Conversely, although only 28.74 per cent of the garments were cut in Maryland, Illinois, New Jersey and Pennsylvania, 41.98 per cent of the man-hours were worked in these States. These comparisons indicate the extent to which the cloth and 1149

garments are transported among the States in the
1150 process of manufacture.

8. The processes in many of the clothing factories are assembly operations. Many firms, for example, do not make shoulder pads for coats in their own factories but buy them from firms specializing in this part of the garment, in many cases causing the pads to be transported from other States. The same is true of the canvasses used in the coats. Finally, certain parts of the suit, as the pants or coat and vest, may be manufactured in one State and the other parts elsewhere, so that
1151 the separate garments must be transported from the various manufacturing plants to a central place for assembly into suits before delivery to the retailer or other purchaser.

9. Thousands of clothing workers are employed in the retail stores in the task of making the alterations on the suits necessary to fit them to the particular customer. The manufacturing operations do not really end until after the suit is fitted to the customer and all alterations completed.

1152 10. It is obvious that the market for men's clothing is a national one. Since most of the clothing is produced in a few States—over 90 per cent in seven States—but is used in every State, the sale and distribution of the clothing involves transportation and commerce among the States. In 1929 in the seven States which produced 90 per cent of the total—New York (46.33 per cent); Pennsylvania (11.72 per cent); Ohio (11.17 per cent); Illinois (9.12 per cent); Maryland (7.20 per cent); Massa-

chusetts (4.07 per cent); New Jersey (.70 per cent), only 48 per cent of the total sales were made—New York (16.7 per cent); Pennsylvania (8.1 per cent); Ohio (5.9 per cent); Illinois (8.7 per cent); Maryland (1.3 per cent); Massachusetts (4.1 per cent); New Jersey (3.2 per cent). In 21 States no men's clothing was produced at all, but these same States accounted for 12 per cent of the total clothing sold. 1153

11. The manufactured clothing is marketed in a variety of ways. The bulk of the clothing is sold by manufacturers to retailers located in every State. Sales to retailers in 1929 amounted to 63 per cent of the total measured by value. 1154 These retailers consist of men's and boys' clothing stores, furnishings stores, family clothing stores, department stores, general stores and dry goods stores. More than half of the total retail sales were made by the men's and boys' clothing and furnishing stores. Recently, the chain store method of distribution has become important and in 1929 there were 286 men's wear chains operating 3,054 stores. Nine of the 85 of these chains which sold only men's clothing were national in scope and sold 25 per cent of the men's and boys' clothing sold in the type of store described as "men's clothing stores". 1155 In addition, some manufacturers now own and operate retail outlets located in many States. In 1929 distribution through the manufacturers' own retail outlets amounted to 8.3 per cent of the total sold. This method of distribution is increasing. Only 14 per cent of the product was disposed of to independent wholesalers and 6 per cent to wholesale branches owned by the manufacturers.

12. About 5.9 per cent of the men's clothing pro-
1156 duced in 1929 was sold direct to household consumers by means of house-to-house canvassing. About 299 plants distributed their product in this manner. The canvasser has samples of material from which the customer makes his selection. His measurements are taken, the garment is manufactured pursuant to the order and shipped direct to the customer.

13. Sales to retailers are made through two main methods—sending salesmen out to travel from State to State and maintaining show rooms in
1157 New York City and other cities, which are visited by buyers from stores throughout the country. The New York market is the largest in the country for the sale of men's clothing. The Daily News Record, a trade journal, and the New York Times list daily the arrival of buyers of men's clothing. These buyers visit the show rooms of the manufacturers and make their selections from samples on hand. Many buyers maintain headquarters in New York and are visited there by salesmen for the manufacturers. The two directories of the men's wear industry, The
1158 American Clothier and Fairchild's Men's Wear, list sales offices and buying offices. Show rooms are maintained in other cities, including Chicago and Los Angeles.

The salesmen on the road establish in some large cities temporary show rooms where their samples may be inspected by the buyers of the stores in that area. Their main trips are at specified times during the year in advance of the Fall and Spring retail selling seasons.

14. National advertising of their product is utilized by many of the manufacturers. In addition to advertising in the trade journals, such as the Daily News Record, The American Clothier and Fairchild's Men's Wear, they advertise in magazines of national circulation. Moreover, by means of trade marks and trade names they are able to advertise nationally by using prominent newspapers in the various cities. Such advertising greatly assists the salesmen by creating a familiarity with the product and a demand for it. Eleven firms spent more than a half million dollars in magazine advertising in 1929. 1159 1160

15. The men's clothing industry is thus an industry which is nearly entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation. There is a constant flow of raw wool from the Western States and foreign countries to the mills of New England where it is transformed into men's wear fabrics, thence to the sponging and shrinking plants of New York and Philadelphia, then, joined by the other necessary raw materials, to the fabricating factories of the Middle Atlantic States for manufacture into clothing. This last operation involves a large amount of movement of the cloth and manufactured garments from State to State until final assembly of the finished product. Finally, in the main by way of retail stores, the garments are distributed to customers located in every State. No clothing manufacturing concern could exist without this dependence upon interstate commerce. The industry itself has no doubt as to its status, for the Executive Director of the New York Cloth- 1161

ing Manufacturers Exchange, Inc., which repre-
1162 sents about 250 manufacturers doing 70 per cent of the total business in the New York market, stated in his affidavit that the industry is conducted as an interstate business and is entirely dependent upon interstate commerce.

16. As can be gathered from the above, the manufacturing plants are concentrated in certain areas. In recent years there has been a tendency, however, for clothing manufacturers to migrate to other areas. Migration is aided considerably by the mobile character of the industry. The amount in-
1163 vested in fixed capital is relatively small compared with other industries. Heavy machinery or special buildings are not required and dismantling of machinery and installation elsewhere does not involve large expenditures. A large proportion of the capital is invested in garments rather than in buildings and machinery. Moreover, transportation costs are low in proportion to the value of the product. For this reason the industry is carried on without regard to the sources of raw materials or the areas of consumption and involves an extensive use of
1164 transportation facilities even during the process of manufacture.

The chief incentive to this migration is the search for lower labor costs. The industry is highly competitive—no single concern does more than 3 per cent of the total business. While the largest manufacturer employs about 3,500 people, the fiftieth largest employs only 360. The average for about 3,000 of the total number of establishments is less than 35 employees per establishment. In view of the competitive aspect, reduction in labor costs

is significant as those costs are the most important item next to that of the raw materials. The labor costs are from 20 to 28 per cent of the value of the manufactured product; they are more than 40 per cent of the value added by the manufacturer and are about 75 per cent of the purely manufacturing cost. Moreover, they are the most flexible item in the total costs. While the cost of raw materials is about 50 per cent of the total, the prices of the principal materials are standardized and do not vary greatly from manufacturer to manufacturer. Moreover, since labor costs amount to several dollars on the average suit while transportation costs are only a matter of cents, the search for lower labor costs may be carried on without any regard for the sources of raw materials or the markets for the final product. The migration has thus not been toward such points but toward the lower wage centers. 1165 1166

The shift to low wage areas has been marked. Employment has decreased in those areas where wages have remained stable but increased in places where the wages were lower or less stable. From 1923 to 1929 employment in the industry increased about 20 per cent in cities in which wage earners received less than the average wage, whereas in those cities in which more than the average was paid there were large decreases in employment—38.3 per cent for Chicago, 24.3 per cent for New York, 18.2 per cent for Boston. 1167

II. THE AMALGAMATED CLOTHING WORKERS OF AMERICA

17. The Amalgamated Clothing Workers of America is a labor organization composed of over

1168 125,000 men and women employed in the men's and boys' clothing industry. These members are organized in local unions throughout the United States and Canada. In important industrial centers where there is more than one local, the locals are organized into "joint boards". All locals and other subdivisions are governed by their own by-laws, elect their own officers and manage their own affairs, subject to the general jurisdiction of the national organization which is exercised through a General President, General Secretary-Treasurer and a General Executive Board. The supreme
1169 authority of the union is vested in the biennial convention to which delegates are elected by all the local unions on the basis of membership. The Amalgamated Clothing Workers has been the representative of workers in the men's clothing industry for over twenty years.

18. The men's clothing industry has long faced and still copes with the problem of the sweatshop. The units in the industry are relatively small. The reasons for the predominance of medium size and small size factories are, in part, absence of large
1170 overhead expenses, small initial capital investment, absence of expensive patents, and the seasonal nature of the industry, which permits a closing of the factory during part of the year. The prevalence of these small establishments led to sweatshops and all the ills that flow therefrom—low wages, shocking and inhumane working conditions, child labor, home work, unfair competitive advantages to the employers who ran the sweat-shops and resulting competitive effect upon firms attempting to maintain decent standards, unrest and bitter-

ness on the part of the employees. Of late, moreover, there has been a tendency to maintain sweat- 1171
shop conditions in large factories by locating these factories in rural areas and small cities and exploiting the unorganized workers in those places. Out of such conditions grew the Amalgamated Clothing Workers and its history has been a constant attempt through the medium of collective bargaining to eliminate the sweat-shop and to improve working conditions for the benefit of both manufacturer and employee. Its collective agreements with employers provide for the elimination of home work and child labor and for the maintenance of
sanitary working conditions. These collective 1172
agreements have also meant shorter hours and higher wages to the workers in addition to better working conditions. In 1934, of the ten firms paying the lowest hourly wages, all were non-union firms, whereas all but one of the ten firms paying the highest wages had agreements with the Amalgamated. The average wage of the first ten firms was 46.25 cents an hour, that of the second ten 79.60 cents an hour.

19. The period before the recognition by the em- 1173
ployers of the Amalgamated was marked by long and bitter strikes. In 1921 there had been a general strike in New York City which had lasted for eight months and caused losses of millions of dollars to employers and employees. A similar general strike in New York in 1924 lasted for six weeks and involved all of the 500 firms in that area and their 35,000 workers. The wage loss to the workers was nearly $6,000,000, the financial loss to the manufacturers ran into the millions. In 1910 a

1174 strike occurred in the factories of the largest manufacturer of men's clothing in the country, Hart, Schaffner and Marx in Chicago, which employed 6,000 workers, and spread to other plants in the same area. Similar large strikes occurred in Rochester and Chicago at later periods. Smaller strikes and lockouts were frequent.

This costly industrial strife resulted finally in recognition of the Amalgamated by the employers. In 1910 the Hart, Schaffner and Marx firm entered into a collective agreement with its workers, who became members of the Amalgamated upon its organization, and has continued such relations ever
1175 since that time. Most of the other Chicago manufacturers made similar agreements in 1919. The New York strike of 1924 was ended by the establishment of a collective agreement between the leading manufacturers and the Amalgamated which was soon joined in by other manufacturers in that area. Factories in Rochester, Baltimore, Boston, Cincinnati, Cleveland, St. Louis and Philadelphia recognized the union and entered into agreements with it. Today the Amalgamated has collective agreements with clothing manufacturers and con-
1176 tractors employing the greater number of the clothing workers in the United States.

These collective agreements have brought peace to that portion of the industry that has entered such agreements. Since the signing of the agreement in New York, there has not been a strike or lockout involving signatories to the agreement, who account for about 70 per cent of the clothing manufactured in that area. Since 1919, when the first collective agreement was made there have been no strikes or lockouts in Rochester. The union has

attempted to avoid strikes whenever possible and its industrial policy calls for the use of the strike only as a last resort, since it realizes the terrific cost to the employee, the employer and the public. The collective agreements provide for adjustment of grievances by negotiation between the union representatives and the employers' representatives. As most of the employers in the major centers are organized into associations so as to obtain the benefits of collective bargaining on the employers' side, the process of negotiation is simplified. The representatives on both sides are well versed in all aspects of the industry. Disputes which cannot be resolved in this manner are referred to arbitration before the impartial machinery established for that purpose by the collective agreement. Through the medium of the various decisions of the Impartial Chairmen who have functioned in the role of arbitrators there has been evolved a "common law" for this industry. The Impartial Chairmen, many of whom are well-known public figures,* testified in their affidavits to the stabilization and peace effected by this collective bargaining and settlement of disputes.

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Since the signing of the collective agreement for the New York area, the New York Clothing Manu-

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* The following testified in this case: Dr. William M. Leiserson, now Chairman of the National Mediation Board and formerly an Impartial Chairman in Rochester, New York and Chicago, Dr. Henry Moskowitz, now Impartial Chairman in New York, Professor Harry A. Millis, a member of the former National Labor Relations Board and formerly an Impartial Chairman in Chicago, and Dr. Benjamin M. Squires, formerly Impartial Chairman in Chicago. Other well known men who have acted as Impartial Chairmen are Professor Felix Frankfurter, Professor William Z. Ripley, Professor David Friday, Professor James H. Tufts, Clarence Darrow, Dr. J. L. Magnes, Professor Frank J. Goodnow and Judge Jacob Moses.

facturers Exchange, Inc. and the Amalgamated
1180 have handled jointly a total of 21,193 complaints and disputes. In only 898 of these cases, or slightly over 4 per cent, was a resort to arbitration required because of inability to agree. Of these 898, 30 per cent were settled by the Impartial Chairman acting as a mediator; in the remainder he sat as an arbitrator and rendered a decision. In only seven cases has there been willful non-compliance with decisions of the Impartial Chairman and in only two of these seven was it necessary to resort to the courts. In Rochester, since 1928, 395 out of a total
1181 of 1,337 cases have been referred to the Impartial Chairman for his decision; the rest have been adjusted by agreement between the representatives of the employers and employees.

20. The Amalgamated has also striven constantly to improve the general economic and social condition of its members. It has evolved a system of unemployment insurance based mainly upon contributions by employers. During the depression it has raised by assessments considerable funds for the relief of unemployed clothing workers. In
1182 order to enable the clothing workers to obtain credit and to maintain small saving accounts, it has established banks in New York and Chicago, credit unions and cooperative investment services. It has promoted a number of cooperative apartment houses in New York City, which accommodate over 4,000 people at low rentals. Beside affording comfortable living quarters, these houses furnish cooperative social and educational centers.

21. The Amalgamated has also cooperated with employers in attempts to improve their business.

Processes have been analyzed and rates established in individual shops that enable a given firm to produce a garment which it could market on an equal basis with its competitors. The union has aided in the elimination of overhead expenses by assisting in the consolidation of shops and sections and by assuming responsibility for quality, thereby permitting a sharp reduction in the amount of supervision necessary. Wage rates have been reduced where employees' earnings were excessive. The employers have benefited from the improved morale of the workers. Restrictive practices have been modified and sometimes eliminated entirely when changes in manufacturing or distribution made such restrictions oppressive. By attempting to maintain a fair scale of minimum wages and maximum hours, the Amalgamated has done much to protect the manufacturer from the unfair competition of the wage-cutter and the sweat-shop operator. Since wages and prices in one market affect conditions in other markets, it acts as a stabilizing force in the industry by attempting to eliminate such unfair competition while at the same time preventing dislocation of certain markets by drastic demands on union manufacturers. When its members have ceased work and created a stoppage contrary to a collective agreement, the union has disciplined them and ordered them to return to work. 1183 1184 1185

22. The benefits that flow from recognition of the Amalgamated and cooperation with it have been realized by those manufacturers that have entered into agreements with the Amalgamated. The President of the New York Clothing Manufacturers

Exchange, Inc., which represents about 250 manu-
1186 facturers doing about 70 per cent of the total business in the New York market, has stated that the "organization of collective bargaining machinery, the establishment of an impartial tribunal, and the founding of unemployment insurance are the outstanding achievements" in the industry and that the Amalgamated Clothing Workers "has been perhaps the largest single contributing factor to the lasting peace and harmony that have characterized those clothing markets where the Amalgamated Clothing Workers of America was the other contracting party to the collective agreement". Simi-
1187 larly, the President of the Clothiers' Exchange of Rochester, New York, which includes 5 leading clothing manufacturers employing 6,500 workers, stated that "once the principle of collective bargaining is recognized and machinery is set up for the adjustment and arbitration of disputes under an agreement reached through collective bargaining, industrial peace may replace industrial war". The labor manager of the New York Clothing Manufacturers Exchange, Inc. testified to the effectiveness of the machinery established to adjust disputes
1188 by negotiation and arbitration rather than by strikes and lockouts.

III. THE FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

23. The respondent Friedman-Harry Marks Clothing Company, Inc. is a Virginia corporation having its principal office and a plant at Richmond, Virginia. At such plant it is engaged in the pur-

chase of raw materials and the manufacture, sale and distribution of men's clothing. 1189

24. The principal materials used by the respondent in the manufacture of men's clothing are woolen and worsted goods. 99.57 per cent of the woolen and worsted goods so used by the respondent come from States other than the State of Virginia. The selling offices of the manufacturers from whom such materials are purchased are located in New York and 75 per cent of all the woolen and worsted goods used by the respondent was purchased in New York, the remainder being purchased at Richmond. The material so purchased was fabricated in the following States: Massachusetts (50 per cent); Connecticut (10 per cent); New York (8 per cent); Rhode Island (8 per cent); New Jersey (5 per cent); Pennsylvania (4 per cent); South Carolina (3 per cent); Illinois, Indiana and Maine (12 per cent); Virginia (.43 per cent). 1190

25. With respect to the other materials used by the respondent in the manufacture of clothing, the cotton linings come from South Carolina (40 per cent), Georgia (40 per cent), and North Carolina (20 per cent), 95 per cent of the purchases of such linings being made in New York and the remainder in Maryland; rayon linings come entirely from New York; all of the canvas used is bought in and comes from Pennsylvania; all of the thread and other sewing materials and the buttons come from and are bought in New York; all of the shoulder pads are bought in and come from Maryland; the hymo (a hair material used in stiffening lapels) comes from Pennsylvania; the felt and 1191

1192 under-collar cloth are purchased in Virginia but come from New York; the silesia and wigan (cheap cotton materials) are purchased in Virginia but come from South Carolina; and the cotton tape is purchased in Virginia but comes from Pennsylvania.

26. The respondent acquires title to the woolen and worsted cloth at the point of shipment. Pursuant to its direction the cloth is sent by truck and rail to a sponging firm in New York City for shrinking. After this process is completed, the cloth is shipped to the plant at Richmond by truck or rail.

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27. The woolen and worsted cloth is manufactured into men's clothing at its plant in Richmond, Virginia. The respondent has no work performed for it by contractors nor does it do work for other manufacturers. About 550 employees were employed by respondent in 1932, 625 in 1933, 675 in 1934 and 800 in 1935.

28. Of the garments manufactured by the respondent, 82.8 per cent are purchased by customers

1194 located outside of the State of Virginia, as follows: Texas (10 per cent); North Carolina (10 per cent); New York (7 per cent); Illinois (7 per cent); Tennessee (5 per cent); Louisiana (5 per cent); Indiana, Kentucky, Alabama, Georgia, Maryland, District of Columbia, South Carolina, Florida, Ohio, Missouri, Michigan, Massachusetts, Rhode Island, Connecticut and Pennsylvania. The customers are mainly department stores and men's clothing stores in the larger cities throughout the country. The respondent maintains a sales office

and show room in New York City, through which 15 or 20 per cent of the total sales are made. Several officers of the company are usually resident in New York City. It has eight persons engaged as traveling salesmen, some being officers and members of the Board of Directors. The orders are sent to the Richmond plant, the goods being sold f. o. b. Richmond. They are shipped by railroad, truck, railway express, water or Parcel Post pursuant to the customers' orders. The respondent advertises in the Fairchild's Men Wear Directory and in the American Clothier. It has a registered trade mark, "Rockingham", for use in commerce among the several States. 1195 1196

29. In 1932 the volume of business amounted to $800,000 and 80,000 units; in 1933 to $1,000,000 and 100,000 units; in 1934 to $1,500,000 and 100,000 units; and for the first ten months of 1935, to $1,750,000 and 150,000 units. This increase is in part due to an investment of $50,000 in the company in 1931 by Louis M. Friedman, formerly engaged in the men's clothing business in New York City. The respondent is among the fifty largest firms in the men's clothing industry and among the ten firms in that group paying the lowest average wage. 1197

IV. THE UNFAIR LABOR PRACTICES

30. The employees of the respondent in the summer of 1935 had formed a local of the Amalgamated Clothing Workers of America and were soliciting membership therein. The management of the respondent at once indicated hostility to the union or-

ganization of its employees and declared that it
1198 would not permit them to join the Amalgamated. Morton Marks, President of the respondent, at various times verbally expressed his antagonism to the Amalgamated. On June 28, 1935, he told an employee that union employees would not be permitted to work in the plant and that he was not going to run a union shop. Another employee was told on the same day that the "union was the worst thing in the world". That same month he stated to a group of female employees that "I will fire every damn one that attends the union meeting". During the first week of July, Keeve Marks, Secre-
1199 tary of the respondent, told an employee that "If we hear of your going to those damn meetings, you are going to get fired" and then suggested to him that he go to the union meeting with a number of employees and "wreck the damn place. Bang on the seats, boo them, stamp upon the floor." Then came a note of caution: "You had better let me know who is going, because if I notice any of you all over there that I do not know are going, you are going to get fired and I don't mean maybe. I don't mind your going if you go and then come
1200 back and tell me exactly what they are going to do." In September, Morton Marks told some of the employees that "If the union gets the upper hand of me, I will move my plant away from Richmond", and added "I'll take anybody that does not belong to the union." On June 28, he discharged three employees, Farley Holder, Holder's sister Beulah Ashworth and her husband, for attending a union meeting, informing them that he was making examples of them since they had all been employed

at the plant for a long time. At various times during this period Marks often questioned the employees about their relations with the union and made clear his enmity towards it. 1201

31. The management of the respondent has maintained surveillance over union meetings and activities. On June 27, 1935, Morton Marks and the superintendent of the respondent's plant secretly observed a union meeting. On August 21, Marks again watched a union meeting of the respondent's employees. In September he told Katherine Hutchinson, an employee, to attend union meetings and report to him the names of those that attended, paying her $22.50 a week for her services. The management appeared to be well-informed regarding the union activities of their employees. 1202

32. On August 1, 1935, a petition was circulated in the plant by certain employees who requested the others to sign it. The petition stated that the employees desired to express their loyalty to the firm and their satisfaction with working conditions. Moreover, it stated that they resented the activity of the union organizers and their attempts to create dissension. While it is not clear whether the idea of such a petition originated with the management or with the employees, it is obvious that the management was informed of those who refused to sign and that such refusal to sign was regarded as signifying either union membership or approval of the union. In some cases foremen attempted to obtain signatures. In one instance the employee circulating the petition informed another employee who was refusing to sign that the foreman said "sign it or else"—the employee then signed the petition. 1203

1204 33. The complaint alleges that the employment of a number of employees was terminated by the respondent and other employees were laid off because of their union membership or activity. Those cases as to which evidence was given will now be considered in detail:

(a) Archer Brock—He had been employed since 1932 pressing waist bands. He was the oldest employee in respect to seniority of the five engaged in that operation and was regarded as an efficient worker. He joined the union on July 18, 1935, attended one of its meetings and was active in
1205 soliciting members. He refused to sign the August 1 petition. On August 2 he was laid off on a flimsy pretext (not important here) and on August 16 he was discharged, the superintendent indicating that his employment was being definitely terminated because he had complained to the union about his lay-off. A non-union man was put in his place.

(b) Robert L. Koch—He commended his employment with the respondent on July 10, 1935, and was the junior of the five on his operation,
1206 that of pressing seams. On July 30, 1935, he joined the union and thereafter attended its meetings and was active in obtaining new members. He did not sign the August 1 petition. On August 7 he attended a union meeting and on the next day the foreman made the first complaint about his work. On August 14, the foreman deliberately rumpled a pair of pants which Koch had just pressed and then complained about his work. Two days later his employment was terminated and a non-union man put in the place of the employee transferred to his position.

(c) Wilson Lane—He had worked from July, 1932, to July, 1934, as a waist band presser for the respondent and had returned to that job in July, 1935. He joined the union on August 2, 1935, attended its weekly meetings and solicited members. On September 6, he was laid off for a week and then on his return was discharged. A non-union man had been transferred to his place. 1207

(d) Bryce Williams—He commenced his employment with the respondent as an off-presser and vest man on January 22, 1935, and was the second in point of seniority of a group of four. He refused to sign the August 1 petition and had been questioned about the refusal by his foreman. He joined the union on August 5, 1935, attended its meetings and was active in soliciting members. He was discharged by his foreman on September 19, the foreman indicating clearly that he disliked being ordered to take such action. He told Williams that his work had always been satisfactory and that he could not tell him the reason for the action. 1208

(e) Luella Nichols—She had commenced her employment in 1928 on the work of felling collars. She was first in seniority of the group of thirty on that operation and frequently was given work that required special skill. She did not sign the August 1 petition. On August 21 she attended a meeting and joined the union. The next day Morton Marks questioned her about the union, indicating he was surprised to learn she had joined because he thought she was his "friend". On September 9, 1935, she was discharged by Morton Marks, the discharge following shortly after she had suggested to an em- 1209

ployee that she join the union and the report of the
1210 suggestion by that employee to a sub-foreman.

(f) Dorothy McAden—She had been employed since June, 1932, as a baster and under-collar worker and was the second in point of seniority of a group of four. She was regarded as an efficient worker. She joined the union in July and attended all of its meetings and visited prospective members at their homes. On September 5, one of the employees whom she had called upon the night before reported that visit to the forewoman. The
1211 latter then told McAden that her joining the union "is going to hurt you a lot in the factory". On September 9, another of the employees whom she had visited reported that fact to the foreman and McAden was discharged shortly thereafter on the same day.

(g) Reba Holder—She had been engaged in stitching corners since 1930 and was the oldest in point of seniority of a group of three. She had refused to sign the petition. On July 22, 1935 she joined the union and thereafter attended its meet-
1212 ings and solicited members. On September 26, she was laid off for a day and a half, although the other two on her operation continued working. Her employment was terminated on October 25, the foreman telling her that she was "the only one who is not satisfied" on that operation.

(h) Sara Sheffield—She commenced her employment in January, 1934, and since June, 1935, had been engaged in serging pants. She joined the union on July 19, 1935, and thereafter attended

its meetings. She was laid off on September 18 by the foreman, who told her that work was slack. 1213
On September 26, pursuant to a charge filed by the union, the Regional Attorney for the National Labor Relations Board conferred with some officers of the respondent and the superintendent. In the course of the conference he mentioned the case of Sheffield, who, it was stated in the charge, had been laid off because of her membership in the union. The foreman was called in and stated she had merely been laid off. Morton Marks then said: "She may have been laid off before, but she is discharged now, running down there and causing all this trouble." 1214

(i) Doris Koch*—She commenced her employment as a pocket raiser with the respondent on February 8, 1934. She joined the union on July 30, 1935, attended its meetings and solicited members, even visting the homes of employees for that purpose. On September 9 she was laid off for a day and again on September 13 for two days because of slack work. Previously work had been shared. Moreover, another girl took her place during the first lay-off.

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34. Considering the circumstances in each of the above cases in connection with the undeniable and open antagonism of the respondent toward the union, its attempts ruthlessly to stamp out the union's existence at the plant and its failure to offer any explanation of such acts, we conclude that the

* This employee is also involved in the second case concerning this respondent, Case No. C-50.

employment of each of the employees mentioned in
1216 Finding 33 (a) to (h) above was terminated as therein described because of their membership in the Amalgamated Clothing Workers of America and their activities in connection with that organization, and that Doris Koch and Reba Holder were laid off for a similar reason.

35. Sara Sheffield was discharged as described in Finding 33 (h) above for the additional reason that she had filed charges against the respondent under the National Labor Relations Act.

1217 36. Interference by employers in the men's clothing industry with the activities of employees in joining and assisting labor organizations and their refusal to accept the procedure of collective bargaining has led and tends to lead to strikes and other labor disputes that burden and obstruct commerce and the free flow thereof. In those cases where the employees have been permitted to organize freely and the employers have been willing to bargain collectively, strikes and industrial unrest have gradually disappeared, as shown in Finding 19. But where the employer has taken the contrary posi-
1218 tion, strikes have ensued that have resulted in substantial or total cessation of production in the factories involved and obstruction to and burden upon the flow of raw materials and finished garments in interstate commerce.

37. The President of the respondent stated on September 26, 1935 that the labor difficulties in the plant had seriously curtailed its production. The plant had produced 84,000 units in the spring and

would probably be able to produce only 60,000 in the fall of 1935. One customer in a Western State had refused to give the respondent an order of 30,000 units since he had heard a strike was impending in the plant and he therefore could not be certain that the respondent would be able to fill the order. 1219

38. Since no evidence was introduced with respect to the cases of Mrs. Gertrude Holder, Margaret Turnstall, Hobert Holder, Mrs. Robert Binns, John Gall, Heywood Tunstall and Floyd Chetty, the Trial Examiner rightly dismissed the allegations in the complaint regarding these employees. For the same reason, the allegations with respect to the employees in Paragraph 8 and with respect to Arnold Holder are dismissed. In addition, because of insufficient evidence the allegations in Paragraphs 6 and 7 of the complaint are also dismissed. 1220

CONCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

39. The Amalgamated Clothing Workers of America is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act. 1221

40. By terminating the employment of Arthur Brock on August 2, 1935, Robert Koch on August 16, 1935, Wilson Lane on September 6, 1935, Luella Nichols on September 9, 1935, Dorothy McAden on September 9, 1935, Bryce Williams on September 19, 1935, Sara Sheffield on September 26, 1935, and Reba Holder on October 25, 1935, and by the

1222 lay-offs of Doris Koch on September 9, 1935, for one day and September 13, 1935, for two days and of Reba Holder on September 26 for a day and a half, as described in Findings 33-35 above, and by each of said acts, the respondent did discriminate in regard to tenure of employment and has thereby discouraged membership in the labor organization known as the Amalgamated Clothing Workers of America.

41. By the acts described in Findings 30, 31, 33, 34 and 35 above, insofar as they occurred after July 5, 1935, and by each of them, the respondent 1223 has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

42. The aforesaid acts of respondent occurred in the course and conduct of commerce among the several States and immediately affect employees engaged in the course and current of such commerce.

43. The aforesaid acts of respondent have bur- dened and obstructed the course and conduct of com- 1224 merce among the several States and lead and tend to lead to labor disputes burdening or obstructing such commerce and the free flow thereof.

Upon the basis of the foregoing the Board finds and concludes as a matter of law:

(a) Respondent, by discriminating in regard to the tenure of employment of Archer Brock, Robert Koch, Wilson Lane, Luella Nichols, Dorothy Mc-

Aden, Bryce Williams, Sara Sheffield, Reba Holder and Doris Koch, by threats of discharge, expressions of hostility toward the Amalgamated Clothing Workers of America and surveillance of its activities and the activities of its employees in connection with such organization, and by each of said acts, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act. 1225

(b) Respondent, by discouraging membership in the labor organization known as the Amalgamated Clothing Workers of America by discriminating in regard to the tenure of employment of Archer Brock, Robert Koch, Wilson Lane, Luella Nichols, Dorothy McAden, Bryce Williams, Sara Sheffield, Reba Holder and Doris Koch, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act. 1226

(c) Respondent, by its discharge of Sara Sheffield because she filed charges under the National Labor Relations Act, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (4) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act. 1227

ORDER

On the basis of the findings of fact and conclu-

sions of law and pursuant to Section 10, subdi-
1228 vision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Friedman-Harry Marks Clothing Company, Inc., and its officers and agents, shall:

1. Cease and desist (a) from discharging any of its employees or otherwise discriminating in regard to the tenure and conditions of their employment, and from threatening such action, for the reason that such employees have joined or assisted the Amalgamated Clothing Workers of America or
1229 otherwise engaged in union activity; (b) from maintaining surveillance of the activities of the Amalgamated Clothing Workers of America and of the activities of their employees in connection with such organization; (c) from discharging or otherwise discriminating against any of its employees for filing charges or giving testimony under the National Labor Relations Act; and (d) from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representa-
1230 tives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Archer Brock, Robert Koch, Wilson Lane, Luella Nichols, Dorothy McAden, Bryce 1231
Williams, Sara Sheffield and Reba Holder immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Archer Brock, Robert Koch, Wilson Lane, Luella Nichols, Dorothy McAden, Bryce Williams, Sara Sheffield, and Reba Holder for the loss of pay they have suffered by reason of the termination of their employment by payment, respectively, of a sum of money equal to that which each would normally have earned as 1232
wages during the period from the date of termination of employment, as stated in the findings of fact, to the date of such offer of reinstatement, computed in this case by averaging the wages earned during said period by the employees engaged in the same operations, respectively, as were the above employees prior to the termination of their employment;

(c) Post immediately notices to its employees in conspicuous places in the plant stating (1) that the respondent will cease and desist as provided in 1233
Paragraph 1 of this Order, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

And it is further ordered,

3. That the complaint be, and it hereby is, dismissed with respect to the allegations of Paragraphs

6, 7, 8 and 9, the allegations of Paragraph 4 re-
1234 specting Arnold Holder, Mrs. Gertrude Holder, Mrs. Robert Binns and Margaret Turnstall, and so much of the allegations of Paragraphs 11, 12 and 15 as depend upon the aforesaid allegations.

Signed at Washington, D. C., this 28th day of March 1936.

J. Warren Madden
Chairman

John M. Carmody
1235 Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

1236

Petition for the Enforcement of an Order of the National Labor Labor Relations Board 1237

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., Respondent.	October Term, 1935 No 1238

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to authority conferred upon it by the provisions of an Act of Congress, approved July 5, 1935 (Public No. 198 74th Congress, 49 Stat. 10, 29 U. S. C. A., Chap. 7, Sec. 160(e)) known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted against respondent, Friedman-Harry Marks Clothing Company, Inc. Said proceeding is known upon the records of the Board as Case No. C-50, the title thereof being "In the Matter of Friedman-Harry 1239

Petition for the Enforcement of an Order of the National Labor Relations Board

1240 Marks Clothing Company, Inc. and Amalgamated Clothing Workers of America."

In support of such petition, petitioner respectfully shows:

(1) Respondent, Friedman-Harry Marks Clothing Company, Inc., is and at all times herein mentioned was, a corporation organized under and existing by virtue of the laws of the State of Virginia, is authorized to do business under the laws of the State of New York and has offices and transacts business at New York, New York.

1241

(2) By reason of the matters alleged in paragraph (1) hereof, the Court has jurisdiction of this petition under Section 10 (e) of the said National Labor Relations Act.

(3) On the 19th day of November, 1935, a charge having previously been filed with the Board by the Amalgamated Clothing Workers of America, the Board issued its complaint charging that the respondent had engaged and was engaging in certain unfair labor practices affecting commerce

1242 within the meaning of the National Labor Relations Act. On the 19th day of November, 1935, said complaint, together with notice of hearing thereon, was duly served upon respondent. Thereafter, on or about the 26th day of November, 1935, the respondent filed its answer to the said complaint.

(4) Thereafter on the 5th day of December, 1935, a trial examiner, duly designated by the Board for the purpose, held a hearing on the charges

stated in said complaint, pursuant to the said notice of hearing. At said hearing, opportunity to present testimony and other evidence with respect to the charges stated in said complaint was given to the several parties to said proceeding, including respondent, who was present and represented by counsel. 1243

(5) On the 28th day of March, 1936, the Board having duly considered the matter and being sufficiently advised in the premises and being of the opinion, upon all of the testimony and evidence, that respondent had been and then was engaging in certain unfair labor practices affecting commerce, within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondent: 1244

"ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Friedman-Harry Marks Clothing Company, Inc., and its officers and agents, shall: 1245

1. Cease and desist (a) from discharging any of its employees or otherwise discriminating in regard to the tenure and conditions of their employment, and from threatening such action, for the reason that such employees have

1246 joined or assisted the Amalgamated Clothing Workers of America or otherwise engaged in union activity; and (b) from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

1247

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

1248

(b) Make whole said Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan for the loss of pay they have suffered by reason of the termination of their employment by pay-

ment, respectively, of a sum of money equal 1249
to that which each would normally have earned as wages during the period from the date of termination of employment, as stated in the findings of fact, to the date of such offer of reinstatement, computed in this case by averaging the wages earned during said period by the employees engaged in the same operations, respectively, as were the above employees prior to the termination of their employment;

(c) Post immediately notices to its em- 1250
ployees in conspicuous places stating (1) that the respondent will cease and desist as provided in Paragraph One of this Order, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

And it is further ordered,

3. That the complaint be, and hereby is, dismissed with respect to the allegations of Paragraph 4 respecting Reba Holder, Edna 1251
Hicks and Lillian Tunstall and so much of the allegations of Paragraphs 5, 6 and 8 as depend upon the aforesaid allegations."

(6) The said order was duly served upon respondent and is, and at all times since its said issuance and service has been, in full force and effect.

WHEREFORE the Board petitions this Honorable Court for the enforcement of its said order

1252 of March 28th, 1936, and pursuant to Section 10(e) of said National Labor Relations Act certifies and files with this petition a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, and that this Court take jurisdiction of the proceeding and of the questions determined therein, and make and
1253 enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order made thereupon, a decree enforcing in whole said order of the Board and commanding respondent, its officers, agents and representatives, to comply therewith.

J. Warren Madden, Chairman.
John M. Carmody, Member.

Charles Fahy, General Counsel
National Labor Relations Board,
1254 Washington, D. C.

Robert B. Watts, Associate General
Counsel, National Labor Relations
Board, Washington, D. C.

District of Columbia,
City of Washington, *ss.*:

J. Warren Madden and John M. Carmody, being duly sworn, depose and say that they are members

of the National Labor Relations Board and make 1255
this affidavit on behalf of said Board; that they have read the foregoing petition and have knowledge of the facts stated therein; and that the statements made in the foregoing petition are true to the best of their knowledge and belief.

J. Warren Madden, Chairman,
National Labor Relations Board.
John M. Carmody, Member,
National Labor Relations Board.

Subscribed and sworn to before me 1256
this 28th day of March, 1936.
(SEAL)

John E. Lawyer
Notary Public, District of Columbia
My commission expires September 8, 1939.

1257

Certificate of National Labor Relations Board

1258

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., Respondent.	October Term, 1935 No

1259

The National Labor Relations Board, by its Secretary duly authorized by Rule and Regulation of the National Labor Relations Board dated the 16th day of October, 1935, a copy of which rule and regulation is attached hereto and made a part hereof, does hereby certify that the documents annexed hereto constitute a full and accurate

1260

transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Friedman-Harry Marks Clothing Company, Incorporated and Amalgamated Clothing Workers of America" the same being case No. C-50 before said Board, said transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows: 1261

(1) Copy of charge of the Amalgamated Clothing Workers of America filed on November 12, 1935.

(2) Copy of complaint and notice of hearing issued by the National Labor Relations Board on November 19, 1935.

(3) Copy of special appearance of Friedman-Harry Marks Clothing Company filed November 26, 1935.

(4) Copy of answer of Friedman-Harry Marks Clothing Company filed November 26, 1935. 1262

(5) Copy of order of National Labor Relations Board dated November 29, 1935 designating Trial Examiner.

(6) Certified copy of stenographic report of hearing before the Trial Examiner December 5, 1935, including exhibits admitted in evidence.

(7) Copy of decisions, findings of fact and order of National Labor Relations Board dated March 28, 1936. 1263

In testimony whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized, as aforesaid, has hereunto set his hand and affixed the Seal of the National Labor Relations Board, in the City of Washington, District of Columbia, this 28th day of March, 1936.

Benedict Wolf,
Secretary.

(SEAL)
National Labor Relations Board.

1264 NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

Rule and Regulation authorizing the Secretary of the Board to certify copies of papers and documents

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby authorizes the Secretary to certify copies of all papers and documents which are a part of any
1265 of the files or records of the Board as may be necessary or desirable from time to time. This Rule and Regulation shall be effective upon its publication in the following manner, namely by the signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, at whose office the original shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C. this 16th day of October, 1935.

1266

(Signed) J. Warren Madden, Chairman

(Signed) Edwin S. Smith, Member

(Signed) Jno. M. Carmody, Member

Certificate of National Labor Relations Board

NATIONAL LABOR RELATIONS BOARD

1267

Washington, D. C.

Rule and Regulation authorizing the Secretary of the Board to certify copies of papers and documents

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby authorizes the Secretary to certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time. 1268 This Rule and Regulation shall be effective upon its publication in the following manner, namely by the signing of the original by the mmebers of the Board and the filing of said original with the Secretary of the Board, at whose office the original shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C. this 16th day of October, 1935.

1269

(Signed) J. Warren Madden, Chairman

(Signed) Edwin S. Smith, Member

(Signed) Jno. M. Carmody, Member

Charge

1270 UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, *and* 1271 AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-4

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that the FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, Richmond, Virginia, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act in that:

1272 1. It discharged J. Wesley Owen, under-presser; Albert Rogers, under-presser; Annie May Rogers, inspector of pants; Mrs. Annie Garnett, a trimmer; Beatrice Garnett, serger of backs; Madeline Clarke, button-hole machine operator; all on September 27, 1935: Sylvia Johnson, stitcher of side pockets, October 21, 1935: Reba Holder, stitcher of corners; Mrs. Maggie High, a button sewer; and Mrs. Edna Hicks, a button sewer; all on October 25, 1935:

and Isaac Kenny, a finished presser, on November 4, 1935; because of their membership 1273
in and affiliation with the AMALGAMATED CLOTHING WORKERS OF AMERICA, a labor organization of the employees of the said FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, and because they engaged in other concerted activities for the mutual aid and protection, and for the purpose of collective bargaining.

2. On or about November 6, 1935, it caused to be circulated a petition discouraging membership in the said AMALGAMATED CLOTH- 1274
ING WORKERS OF AMERICA.

3. During September, October, and November, 1935, it, by its officers, agents, and employees, threatened to discharge anyone who assumed membership in or accepted affiliation with the said AMALGAMATED CLOTHING WORKERS OF AMERICA, and thereby discouraged the membership of its employees in the said AMALGAMATED CLOTHING WORKERS OF AMERICA.

The undersigned further charges that said unfair 1275
labor practices are unfair labor practices affecting commerce within the meaning of said Act.

AMALGAMATED CLOTHING WORKERS
OF AMERICA

John Hirschberg Atty.

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Subscribed and sworn to
before me this 11 day of
November, 1935.

(Signed) Bennet F. Schauffler
Regional Director.

Complaint

UNITED STATES OF AMERICA

1276

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INCORPORATED, a CORPORATION *and* 1277 AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-4

It having been charged by the Amalgamated Clothing Workers of America, Labor Temple, Richmond, Virginia, that the Friedman-Harry Marks Clothing Company, Incorporated, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices, affecting commerce as set forth and defined in the National Labor
1278 Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Fifth Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, (General Rules and Regulations) Article IV, Section 1, hereby issues this complaint and alleges the following:

1. The respondent is and has been since March 5, 1932, a corporation organized under and existing

by virtue of the laws of the State of Virginia, having its principal office and place of business in the City of Richmond, State of Virginia, and is now and has continuously been engaged at a place of business in the City of Richmond, State of Virginia, (hereinafter called the Richmond Plant) in the production, sale and distribution of men's clothing. 1279

2. The respondent in the course and conduct of its business causes and has continuously caused the raw materials used in the production of its men's clothing to be purchased and transported in interstate commerce from and through the states of the United States other than the State of Virginia to the Richmond Plant in the State of Virginia, and causes and has continuously caused substantially all the men's clothing produced by it to be sold and transported in interstate commerce from the Richmond Plant in the State of Virginia to, into and through states of the United States other than the State of Virginia, all of the aforesaid constituting a continuous flow of commerce among the several states. 1280

3. The respondent, by its officers and agents, while operating the Richmond Plant as described above, did terminate the employment of Wesley Owen, underpresser, Albert Rogers, underpresser, Miss Annie Mae Rogers, an inspector, Mrs. Annie Garnett, a trimmer, Miss Beatrice Garnett, a serger, and Miss Madeline Clarke, a button-hole machine operator, all and each of them on September 27, 1935; did terminate the employment of Miss Sylvia Johnson, a stitcher, on October 21, 1935; did terminate the employment of Miss Reba Holden, a 1281

stitcher, Mrs. Maggie High, a button sewer, and
1282 Mrs. Edna Hicks, a button sewer, all and each of them on October 25, 1935; did terminate the employment of Isaac Kenny, a presser, on November 4, 1935; and did terminate the employment of R. L. Morgan, a presser, Mrs. Lillian Tunstall, a finisher, and Mrs. Doris Koch, a pocket raiser, all and each of them on November 8, 1935, being employed in production at the said Plant, and has at all times since said dates refused to reinstate the said persons and each of them.

4. The respondent, by its officers and agents, ter-
1283 minated the employment of and refused to reinstate said Wesley Owen, Albert Rogers, Annie Mae Rogers, Mrs. Annie Garnett, Beatrice Garnett, Madeline Clarke, Sylvia Johnson, Reba Holden, Mrs. Maggie High, Mrs. Edna Hicks, Isaac Kenny, R. L. Morgan, Mrs. Lillian Tunstall, Mrs. Doris Koch, and each of them, for the reason that all of the said employees, and each of them, joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, and engaged in concerted activities with other employees for the
1284 purpose of collective bargaining and other mutual aid and protection.

5. The respondent, by terminating the employment of said Wesley Owen, Albert Rogers, Annie Mae Rogers, Mrs. Annie Garnett, Beatrice Garnett, Madeline Clarke, Sylvia Johnson, Reba Holden, Mrs. Maggie High, Mrs. Edna Hicks, Isaac Kenny, R. L. Morgan, Mrs. Lillian Tunstall, Mrs. Doris Koch, and each of them, did interfere with, restrain and coerce, and is interfering with, restraining

and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act. 1285

6. The respondent, by terminating the employment of said Wesley Owen, Albert Rogers, Annie Mae Rogers, Mrs. Annie Garnett, Beatrice Garnett, Madeline Clarke, Sylvia Johnson, Reba Holden, Mrs. Maggie High, Mrs. Edna Hicks, Isaac Kenny, R. L. Morgan, Mrs. Lillian Tunstall, Mrs. Doris Koch, and each of them, and refusing to reinstate said persons and each of them, did discriminate and is discriminating in regard to the hire and tenure of employment of all the aforesaid persons and each of them, and did impose and is imposing terms and conditions of employment upon its employees, and by all of said acts and each of them, did discourage and is discouraging membership in the Amalgamated Clothing Workers of America, and by all of said acts and each of them, did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act. 1286 1287

7. The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

1288 8. The aforesaid acts of respondent, enumerated in paragraphs three (3.) to seven (7.), inclusive, constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3) and (4), and Section 2, subdivisions (6) and (1) of said Act.

WHEREFORE, the National Labor Relations Board on the 19th day of November, 1935, issues its complaint against the Friedman-Harry Marks Clothing Company, Incorporated, respondent herein.

1289 NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 5th day of December, 1935, at 10 o'clock in the forenoon in the Hearing Room, 4th Floor, State Office Building, Richmond, Virginia, a hearing will be conducted by the National Labor Relations Board by its agent designated in accordance with said Rules and Regulations, Series 1, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear,
1290 in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the *Fifth* Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, within five (5) days from the date of service of the said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pur-

suant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations. 1291

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Regional Director for the *Fifth* Region on the 15th day of November, 1935.

S/ BENNET F. SCHAUFFLER
Regional Director for the
Fifth Region
601 Appraisers Store Building 1292
Baltimore, Maryland

Objections

Comes now Friedman-Harry Marks Clothing Company, Inc., by Weinberg & Sweeten, its attorneys, and appearing specially for the purpose of objecting to the jurisdiction of the National Labor 1293
Relations Board and of J. Warren Madden, Chairman, John M. Carmody, Edwin S. Smith, Members, and of the Regional Labor Director of the National Labor Relations Board for the Fifth Region, Bennet F. Schauffler, and of the trial Examiner and any and all other agents of the National Labor Relations Board, does object in that certain proceeding entitled:

UNITED STATES OF AMERICA
1294 BEFORE THE
NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.,
a corporation

and

1295

AMALGAMATED CLOTHING WORKERS OF AMERICA

Case No. V-C-4

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to the jurisdiction of said National Labor Relations Board and J. Warren Madden, Chairman, John M. Carmody, Edwin S. Smith, Members, and of the National Labor Relations Director of the National Labor Relations Board for the Fifth Region, Bennet F. Schauffler, and of the Trial Examiner
1296 and any and all other agents of the National Labor Relations Board in said proceeding, and to the jurisdiction of said National Labor Relations Board and J. Warren Madden, Chairman, John M. Carmody, Edwin S. Smith, Members, and of the National Labor Relations Director of the National Labor Relations Board for the Fifth Region, Bennet F. Schauffler, and of the Trial Examiner and any and all other agents of the National Labor Relations Board over Friedman-Harry Marks Clothing Company, Inc., on the following grounds:

Objections

1. That the National Labor Relations Act, approved July 5, 1935 (Public No. 198—74th Congress) is invalid, void and in contravention of the rights, immunities and privileges of said Friedman-Hafry Marks Clothing Company, Inc., under the Constitution of the United States of America in that it appears from the face of the proceeding that Friedman-Harry Marks Clothing Company, Inc., is not susceptible of legislation within the meaning of Article I, Section 8 of the Constitution of the United States and that, therefore, as applied against said Friedman-Harry Marks Clothing Company, Inc., said National Labor Relations Act is in violation of Articles Nine and Ten of the Amendments to the Constitution of the United States, which reserve to the people of the United States all rights and powers not delegated in the said Constitution to the Government of the United States. 1297 1298

2. That the matters alleged in the complaint involve transactions and relations between employer and employes, which are purely local in character and are not subject to regulations or legislation by the Congress of the United States, under and by virtue of the provisions of and the reservations contained in Articles Nine and Ten of the Amendments to the Constitution of the United States. 1299

3. That said National Labor Relations Act is invalid, void and in contravention of the rights, privileges and immunities of said Friedman-Harry Marks Clothing Company, Inc., in that it delegates legislative powers to the National Labor Relations Board, contrary to and in violation of Article One of the Constitution of the United States, which vests

all legislative powers in the Congress of the United
300 States and regulates the manner in which all laws shall be adopted and approved, and that it delegates judicial powers to the National Labor Relations Board, contrary to and in violation of Article Three of the said Constitution of the United States, which vests the judicial powers of the United States solely in the Court thereof.

4. That the appointment of the Regional Director of the National Labor Relations Board for the Fifth Region, the filing of charges against Friedman-Harry Marks Clothing Company, Inc., that the
301 calling of a hearing in the above mentioned proceeding, that the appointment of the Trial Examiner and any and all other agents and that all steps heretofore taken or hereafter to be taken by said National Labor Relations Board in the proceeding are invalid, void and in contravention of the rights, privileges and immunities of said Friedman-Harry Marks Clothing Company, Inc., in that they constitute assumption and delegation of legislative and judicial powers in violation of Article One and Three of the Constitution of the United States.

302 5. That said National Labor Relations Act, and particularly Sections 2, 7 and 8 thereof, is invalid, void and in contravention of the rights, privileges and immunities of said Friedman-Harry Marks Clothing Company, Inc., in that it contravenes the Thirteenth Amendment to the Constitution of the United States, which prohibits involuntary servitude and the Fifth Amendment to the Constitution of the United States, which prohibits the deprivation of private property without due process of

law, because such Act, and the acts of the said National Labor Relations Board, Regional Director 1303
of said National Labor Relations Board for the Fifth Region, and the Trial Examiner, and any and all other agents of said Board, claimed to be done pursuant thereto, deprive said Friedman-Harry Marks Clothing Company, Inc., of its liberty and property without due process of law.

6. That said National Labor Relations Act and the National Labor Relations Board, the Regional Director and Trial Examiner and any and all other agents of said Board, claiming to act pursuant thereto, seek to abridge the right of freedom of 1304
speech of Friedman-Harry Marks Clothing Company, Inc., contrary to and in violation of the First and Fifth Amendments to the Constitution of the United States.

7. That the National Labor Relations Act, particularly Section 10 thereof, and the National Labor Relations Board, the Regional Director of said National Labor Relations Board for the Fifth Region, and the Trial Examiner and any and all other agents of said Board, claiming to act in pursuance of said National Labor Relations Act, deny 1305
Friedman-Harry Marks Clothing Company, Inc., the right of trial by jury and the right to have the facts so tried, examined in a Court of the United States according to the rules of common law, contrary to and in violation of Articles Six and Seven of the Amendments to the Constitution of the United States.

8. That said National Labor Relations Board, said Regional Director of said National Labor

Relations Board for the Fifth Region, and said
1306 Trial Examiner and any and all other agents of said Board are seeking to exercise and are exercising powers contrary to and in violation of Articles One and Three of the Constitution of the United States and the Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Thirteenth Amendments to said Constitution of the United States.

FRIEDMAN-HARRY MARKS
CLOTHING CO., INC.,
By: WEINBERG & SWEETEN
By: Leonard Weinberg
1307 Its Attorneys

1308

Answer

UNITED STATES OF AMERICA 1309

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, a Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-4 1310

Friedman-Harry Marks Clothing Company, Incorporated, in filing this Answer, does not waive, but specifically and expressly reserves all rights which it now has, or may have in the future, to take any and all legal steps which it may deem to be necessary or desirable now or in the future to question the constitutionality and validity of the National Labor Relations Act, and all matters and 1311
things done or claimed to have been done thereunder, or in contemplation, and the jurisdictions and powers of the National Labor Relations Board, the Regional Labor Relations Board for the Fifth Region, the Regional Labor Director for the Fifth Region, the Trial Examiner and any and all others claiming to act under the said National Labor Relations Act.

ANSWER OF FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

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Comes now Friedman-Harry Marks Clothing Company, Inc., named as respondent in the above entitled matter, and makes Answer as follows:

1. It admits the allegations contained in paragraph 1 of the Complaint.

2. It denies the allegations contained in paragraph 2 of the Complaint.

1313 3. It admits the allegations contained in paragraph 3 of the Complaint, except that it denies that it "has at all times since said dates refused to reinstate the said persons and each of them."

4. It denies the allegations contained in paragraph 4 of the Complaint.

5. It denies the allegations contained in paragraph 5 of the Complaint.

6. It denies the allegations contained in para-
1314 graph 6 of the Complaint.

7. It denies the allegations contained in paragraph 7 of the Complaint.

8. It denies the allegations contained in paragraph 8 of the Complaint.

WHEREFORE, having answered each and every

allegation of said Complaint, Respondent moves that the Complaint filed against it be dismissed. 1315

FRIEDMAN-HARRY MARKS
CLOTHING COMPANY, INC.

By: WEINBERG & SWEETEN

Leonard Weinberg
Attorneys for Respondent
33rd Floor Baltimore Trust Building,
Baltimore, Maryland.

1316

Order Designating Trial Examiner

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office at the City of Washington, D. C., on the 29th day of November, 1935. 1317

Present:

J. Warren Madden, Chairman
John M. Carmody
Edwin S. Smith

Order Designating Trial Examiner

A charge having been filed in this matter, and
1318 it having appeared to the Regional Director of the 5th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that Henry G. Perring act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

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By direction of the Board:

Benedict Wolf
Benedict Wolf,
Secretary

(Seal)

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Hearings Before Board

BEFORE THE
NATIONAL LABOR RELATIONS BOARD, 1321

FIFTH REGION

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., A Corporation *and* AMALGAMATED CLOTHING WORKERS OF AMERICA 1322	Case No. V-C-4

Hearing Room, Fourth Floor,
State Office Building,
Richmond, Virginia,
Thursday, December 5, 1935.

The above-entitled matter came on for hearing, pursuant to notice, at 2.15 o'clock p. m.

Before:

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HENRY G. PERRING, Trial Examiner.

Appearances:

GERHARD P. VAN ARKEL, Regional Attorney, and

A. L. WIRIN, Attorney, on behalf of the National Labor Relations Board.

JOHN HIRSCHBERG, 220 Broad Grace Arcade,
1324 Richmond, Virginia, on behalf of Amalgamated Clothing Workers of America.

H. BLUMBERG, 15 Union Square, New York, N. Y., on behalf of Amalgamated Clothing Workers of America.

LEONARD WEINBERG and
HARRY J. GREEN, of Weinberg & Sweeten, 33rd Floor, Baltimore Trust Building, Baltimore, Maryland, on behalf of Friedman-Harry Marks Clothing Company, Inc.

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PROCEEDINGS

Trial Examiner Perring: The case before the National Labor Relations Board, Fifth Region, is in the Matter of Friedman-Harry Marks Clothing Company, Inc., a Corporation and Amalgamated Clothing Workers of America, Case No. V-C-4.

Mr. Weinberg: Mr. Examiner, this company was summoned before you on November 6, charged with a violation of the National Labor Relations Act. On that date, in the interest of saving both the
1326 Government and our client the expense and time incidental to a hearing lasting several weeks, we stated that we would waive our right to cross examine the witnesses, and would present testimony in the form of uncontradicted affidavits. This offer was finally accepted and the case was adjourned for one week in order to give the Government the time which it said it would need to produce those affidavits. The Government requested several postponements until today, and it was only

yesterday that we were furnished with affidavits of the witnesses in the first case. 1327

We call your specific attention to the fact that the affidavit of Mr. Sidney Hillman, the President of the Amalgamated Clothing Workers of America, was not made until the 30th of November, and that the affidavit of Mr. Harry Herwitz, Vice President of the Amalgamated Clothing Workers' Bank, another witness, was not made until December 3rd.

While the determination of that case was being held up, pending the securing of those affidavits, the complainant had both the time and the effrontery on November 15th, to file a second complaint 1328 against this company, involving charges identical with those in the first complaint, which was then awaiting submission to you and your determination.

After this second complaint was brought we offered to have the charges in that combined with those in the first case and determined at the same time as those in the first case. The complaining union refused to accede to that suggestion, which would have permitted the employees referred to in the second complaint to have had their complaints heard and decided along with those in the first case.

We then offered to expedite this second case by 1329 waiving all of our rights of cross examination, the right to produce witnesses on our own behalf, and we offered to permit the complainant to submit all of its evidence in this case in the form of uncontradicted affidavits. This, also, the complaining union has refused, and the Board itself, and we now formally reiterate that offer.

If this offer on our part to save the Government time and money is now refused, we respectfully sub-

mit it must only be because the complainants are
1330 more interested in staging a show and a circus here than they are in obtaining a speedy and inexpensive determinaton of the rights of these employees and of the rights of our clients. There can be no other reason for the gathering here at this time of all these distinguished Government lawyers and union officials and witnesses, because the Government knows that we announced to it in advance that we would not cross examine any of its witnesses or offer any contradicting testimony.

We also call your attention to the fact that
1331 while all of this time and money is being wasted the complainant itself is preventing this very Trial Examiner from deciding the first case.

The Amalgamated Clothing Workers Union knows, counsel and officials of the National Labor Relations Board must know, and certainly we know, that all of this is being done solely for the purpose of trying to harass our client, and for the purpose of trying to cause disturbance and unrest in the plant of the Friedman-Harry Marks Clothing Company, a plant which has always been and is now being and which will continue to be opera-
1332 ted and conducted in a peaceful manner, without interference, until the courts of the United States have been given an opportunity to pass upon the constitutionality of this piece of legislation, indefensible as it is in the light of previous decisions of the Supreme Court of the United States.

Mr. Wirin: Mr. Examiner, as far as the Board is concerned, and speaking for myself, I knew that the afternoon would not go forward very long without a speech from counsel for respondent.

The second complaint is set for hearing at this time. The Board is ready to proceed with that hearing. We are ready to proceed and expect to proceed with a full public hearing, in accordance with the provisions of the National Labor Relations Act, and in accordance with the rules and regulations of the Board, which provide for a hearing to be conducted by the swearing of witnesses and the telling of their stories. With respect to the first complaint we did make an exception to that rule, the only exception which has been made so far by the Board or by counsel for the Board in any case. At that time we hoped that continued violations of the National Labor Relations Act would not be committed by the respondent. If respondent was so anxious to test this Act we assumed that it would have the decency to let matters remain in status quo, and not continue with a policy of discrimination against these workers, and not continue to harass and deny these workers their rights guaranteed to them by this law. That has not taken place. On the contrary, discharges and discrimination have continued, and since they have continued the Board and counsel for the Board have no alternative but to proceed and enforce this law and this mandate of Congress, and any other violations of this law that there may be by this respondent will be followed by additional and new complaints.

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So we are ready to proceed in this case the same as the Board proceeds against any other company, not in any different manner at all, to proceed to put on our case and to submit the matter to the Examiner and to the Board for decision and for

such action as counsel may decide to take. This
1336 proceeding is separate from and distinct from the former proceeding, which was handled in a particular manner. In so far as this proceeding is concerned, we begin by offering into evidence—

Mr. Weinberg: May I just say in response to that before you make your offer—

Mr. Wirin: I will let you speak, but if we spend the rest of the afternoon in the exchange of speeches we shall not be able to proceed with evidence in this case, and only delay your return and our return to Washington, and spend a good deal of
1337 money, which you are so concerned about.

Mr. Weinberg: May I say in response to your statement that our authority for our attitude in this case finds its expression in the opinion of no less a person than Chief Justice Taft of the Supreme Court of the United States in passing upon the constitutionality of another Act of a character similar, perhaps, to this, when he said that if the law be unconstitutional it was the duty of the respondent or the defendant to resist its enforcement.

Trial Examiner Perring: May I say for the
1338 Trial Examiner that there is only one attitude that he can take? The law is the law. It has been passed by Congress and signed by the President. Under it every man has the right to his day in court. The defendant can not set the rules under which the case will be presented. He can object to it, which is his constitutional right, of course. So there is only one thing for us to do and that is to proceed with the case.

Mr. Wirin: We are ready to proceed. I will

show counsel this paper before I offer it into evidence (handing paper to Mr. Weinberg). 1339

I am pleased to report with respect to this paper that Mr. Weinberg has no objection. This is a certified copy of certain records in case No. V-C-4, certified to by Mr. Schauffler, as Regional Director, containing a copy of the charge, the complaint and notice of hearing, certain returns of service, the appointment of the Examiner, extension of time for filing answer, special appearance of respondent company, entered by Mr. Weinberg and his associate, Mr. Green, motion to dismiss the complaint, and answer, also filed by respondent's attorneys, 1340 and the order postponing the hearing, made by Mr. Schauffler. May that be marked Exhibit No. 1 and received?

Trial Examiner Perring: Yes.

(The papers referred to were received in evidence and marked "Board's Exhibit No. 1".)

Trial Examiner Perring: May I ask in connection with that if the motion to dismiss has been ruled upon by the Regional Director, which, under 1341 the rules, he is permitted to do?

Mr. Wirin: I understand the Regional Director has made no ruling on the motion, which really is not a motion to dismiss. It really is in the nature of a special appearance and an answer, and the last prayer of the answer is a motion to dismiss. I suppose there will have to be a ruling by the Examiner at this time on that portion of the answer which counsel has described as a motion to dismiss.

Trial Examiner Perring: That has not been
1342 ruled on. I will overrule that motion, then.

Mr. Weinberg: Then we respectfully note an exception.

Trial Examiner Perring: The exception is noted.

Mr. Wirin: For the purpose of making the trial of this proceeding as short as possible counsel for the Board is willing to stipulate that in this second proceeding all the evidence introduced at the first proceeding shall be incorporated into the record, all of the evidence being all the affidavits and documents, subject to any and all objections and motions to strike which counsel have made, and
1343 subject to such rulings as the Examiner may make, and such exceptions as counsel for the respondent may take and have taken to such rulings.

Mr. Weinberg: Are you talking about the affidavits with respect to the merits?

Mr. Wirin: We are entirely willing—

Mr. Weinberg: Why should they go in?

Mr. Wirin: We are entirely willing that they go into record subject to any objections you may have.

Mr. Weinberg: We are not willing. I can not
1344 understand where their materiality is. I am quite willing to stipulate that all the affidavits which you have offered respecting the interstate commerce features, and the way we conduct our business, and the way the industry, generally, is conducted shall be introduced in this case—reintroduced in this case as a part of this case, subject only to our legal objections, as stated in the first case. I can see no reason in the world for offering all the affidavits of all these ladies and men who were for-

mer employees, and whose complaints are covered by the first case, and whose complaints have nothing 1345
to do with this case, because I offered to combine these two cases, and you declined my offer.

Mr. Wirin: Let us not start making speeches.

Mr. Weinberg: We will accept such portions of the statements as you are willing to agree to. We will stipulate, if your agree to it—

Trial Examiner Perring: May I ask a question just for my own information? Your idea is to introduce these affidavits in so far as they affect the interstate commerce aspect of the case?

Mr. Wirin: That is correct.

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Trial Examiner Perring: Those are the portions you are willing to have admitted, subject to your objections, of course, Mr. Weinberg?

Mr. Weinberg: Yes, sir. We will agree to that, because that was our original offer.

Mr. Van Arkel: Can not we leave it to the Examiner to determine the relevancy and competency of those affidavits? Certain of them relating to the attitude of the company and the knowledge of union activities are clearly relevant to this case. If you are going to exclude those affidavits so far as those issues are concerned we will have 1347
to call witnesses on them. If you will accept them only in so far as the Examiner decides they are material to this case, we can save calling the witnesses on those issues.

Mr. Wirin: That is our thought.

Mr. Weinberg: You go ahead and prove this case as you see fit and we will act as we see fit. That is all I have to say. I understood you originally to tell me that you were coming here today

for the purpose of producing witnesses with re-
1348 spect to the charges contained in your second complaint, and that you proposed, if we had no objection, to offer the same affidavits as to the general character of our business and the testimony of these so-called experts in affidavit form, if we would agree. I told you that we would agree, and we stand by our agreement.

Mr. Van Arkel: In that case we will offer all the evidence in the first case on the ground that it is formal testimony in that the case is between the same parties, the same issues are involved, the
1349 evidence is subject to cross examination by the respondent, and is taken under oath. I, therefore, offer it as admissible evidence here, on any theory.

Mr. Wirin: Suppose we first offer into evidence those affidavits concerning which you have no objection and clear the record as to that, and then we will have a ruling as to the other. By that time maybe Mr. Weinberg will change his mind.

Mr. Weinberg: I can not stop you from proving your case as you wish.

Mr. Wirin: We are trying to save time, aren't we?

1350 Mr. Weinberg: I hope so.

Mr. Wirin: We now offer in evidence in this proceeding Board's Exhibits No. 5 for identification to and including Board's Exhibit No. 17 for identification in Docket V-C-1, such affidavits and documents pertaining to the business of the company and the interstate commerce features of this case.

Mr. Weinberg: Merely for the formal record we now object to the evidence of the witnesses, and to the affidavits accompanying the same, in whole

and in part, on the ground that it is irrelevant, incompetent and immaterial, of no probative force or value; that it contains numerous alleged statements of fact which are, admittedly and confessedly, not of the witness' own knowledge and, therefore, hearsay; that the evidence is argumentative, contains improper and inadmissible conclusions of law and of fact, and we ask that this objection be noted, and if there be no immediate ruling upon the objection here today, then we also ask that we be granted an exception and that our exception be noted to the ruling of the Trial Examiner and/or the National Labor Relations Board. 1351 1352

Mr. Wirin: Do I understand, then, that you make no objection to the form of this testimony, namely, that this testimony is in the form of affidavits as distinguished from oral testimony?

Mr. Weinberg: That is correct.

Mr. Wirin: We suggest that the Examiner reserve ruling upon this matter and that he make his ruling at the time he writes his order.

Trial Examiner Perring: Such will be the action.

Mr. Weinberg: For the purposes, then, of the record we move that the evidence so admitted be stricken out on the ground that it is incompetent, irrelevant and immaterial and of no probative force or value. 1353

Mr. Wirin: We assume the Examiner will rule upon that.

Trial Examiner Perring: Subject to the further decision of the Examiner on the admissibility, the motion is denied, the objection overruled and an exception noted.

Mr. Wirin: All of these affidavits, being Board's
1354 Exhibits Nos. 5 to and including 17, for identification, in Docket V-C-1, are to be marked Board's Exhibit No. 2. I state that merely so that the record may be kept straight.

Trial Examiner Perring: The documents offered will be received in evidence as Board's Exhibit No. 2.

(The papers referred to were received in evidence and marked "Board's Exhibit No. 2.")

1355 Mr. Van Arkel: I should like to offer in the record at this time the affidavits numbered 2 and 18 to 34, inclusive, in V-C-1, as Exhibit No. 3 in this case, on the ground that this testimony is admissible under the rule allowing former testimony.

Mr. Weinberg: We object to the reception in evidence of this testimony contained in these affidavits in whole or in part on the ground that it is irrelevant, immaterial and incompetent; of no probative force or value; that it contains numerous
1356 alleged statements of fact which are, admittedly and confessedly, not of the witnesses' own knowledge and, therefore, hearsay, and that it is argumentative and contains improper and inadmissible conclusions of fact.

Trial Examiner Perring: Subject to further consideration by the Trial Examiner the affidavits will be admitted as Exhibit No. 3 and an exception will be noted.

(The papers referred to were received in evidence and marked "Board's Exhibit No. 3.")

Mr. Weinberg: We make our motion to strike out on the ground that this evidence is immaterial and incompetent, and we do that on the ground of form as well as of substance in this connection. 1357

Trial Examiner Perring: That motion is, subject to further action by the Trial Examiner on admissibility, overruled.

Mr. Weinberg: We note an exception to the Examiner's ruling.

Mr. Van Arkel: I will call Mrs. Maggie High.

MAGGIE HIGH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows: 1358

Direct Examination

Trial Examiner Perring: Give your name to the reporter.

The Witness: Maggie High.

Q. (By Mr. Van Arkel) What is your address?
A. 117 East 37th Street, Richmond, Virginia.

Mr. Weinberg: In order to attempt again to save time and to allow you to examine the witnesses with as little interruption as possible, because we do not intend to cross examine and we do not intend to offer any rebuttal evidence or contradictory evidence to what these witnesses say, may it be agreed and stipulated that as to each of these witnesses and the evidence they are about to give, we object in whole and in part on the ground that the evidence is irrelevant, imma- 1359

terial and incompetent, and of no probative
1360 force or value, and that after the witness has testified there shall be inserted our motion to strike out the evidence on the ground that it is incompetent, irrelevant and immaterial and of no probative value?

Mr. Van Arkel: Of course, we will not agree that the evidence is all incompetent, irrelevant and immaterial.

Mr. Weinberg: I understand that.

Mr. Van Arkel: We will agree that your exception be noted.

1361 Mr. Weinberg: That is all that my suggestion is. That will save our making those objections to each witness' testimony and permit you to examine without interruption after this first witness has testified.

Mr. Van Arkel: Is that satisfactory to you, Mr. Examiner?

Trial Examiner Perring: That is perfectly satisfactory.

Q. (By Mr. Van Arkel) When did you start work for the firm of Friedman-Harry Marks Clothing Company? A. June, 1931.

1362 Q. What was your position there? A. Button sewer.

Q. How many were employed on that operation? A. Do you mean at the time I was—first went there?

Q. Yes, when you first went there. A. On vest sewing, just me. There weren't any other vest sewers there. The coat girls took it up.

Q. How many button sewers were hired subsequently until September of this year? A. Up until

the time I was laid off they had seven—not all the time, though. 1363

Q. Seven button sewers were there at the time you were laid off? A. Yes, sir.

Q. What was your position wth respect to seniority among the button sewers? A. I was the oldest one.

Q. You were the oldest one there? A. Yes, sir.

Q. Had you been selected to do any special work or sample work? A. I did practically all the sample work.

Q. Did you teach any new girls? A. Yes, sir.

Q. Did those two jobs indicate a higher degree of skill on your part? A. Well, I don't know that particularly. 1364

Q. Were the oldest and fastest girls usually selected to do special and sample work? A. No, sir.

Q. On what basis were girls picked to do special and sample work? A. I don't know that there was any basis that I know of, only I was the oldest one and he usually gave me the sample work.

Q. How about the teaching of new girls? Did they usually pick the oldest girls to do that? A. No, not—I was the only one that ever taught them since I have been there. 1365

Q. You were the only one? A. Yes, sir.

Q. Did you at any time become a member of the Amalgamated Clothing Workers of America? A. Yes, sir.

Q. When did you become a member? A. Along the first of July.

Q. Do you remember the exact date? A. No, sir.

Trial Examiner Perring: What year?

Q. (By Mr. Van Arkel) What year? A. This
1366 year—1935.

Q. How many of the button sewers, to your knowledge, became member of the Union? A. All, so far as I know.

Q. Were you asked by anyone to join the Union? A. No, sir, not particularly.

Q. How did you join? A. I was visited by the organizers, and I joined on my own accord.

Q. Was any coercion used in getting you to join? A. No, sir.

Q. Subsequent to the unconstitutionality of the
1367 N.R.A. had your wages been increased or decreased? A. Neither one.

Q. They remained the same? A. Yes, sir.

Q. Did you sign a petition which was circulated in the plant, in the form of Board's Exhibit No. 2 in the former case, V-C-1? A. I never signed it, no, sir. I wasn't there.

Q. You were not working there at that time? A. No, sir. I was sick in bed.

Q. When did you return to work? A. On August 5th.

Q. Was any comment made by anyone at that
1368 time about your failure to sign the paper? A. No, sir, not on that particular day.

Q. At any subsequent time did anyone say anything to you about not signing? A. I had a phone call.

Q. On what day did you receive that phone call? A. I think it was on the 12th of August.

Q. Do you know who made that call? A. No, sir.

Q. Would you tell us what happened, and what

was said? A. Well, some man called me over the telephone and told me I was going to be fired for not signing that paper that went around where I worked. I inquired who he was, and he would not give me any name, so I hung up, because I thought— 1369

Mr. Weinberg: May it be understood, Mr. Examiner, that such evidence that the witness is now attempting to give, which is palpably inadmissible under any circumstances, is objected to as being incompetent, irrelevant and immaterial, or am I going to have, each time one of these witnesses testifies as this lady is testifying now, to get up and make this objection. It is obvious to counsel that much of what this lady has already said is legally incompetent and of no probative value and really inadmissible. I do not want to be in the position of being captious here. I do not want to make a lot of objections. I do not want to burden the record with innumerable objections, which will break up the continuity of your testimony, but this stuff is so obviously inadmissible that I cannot sit by and not make formal objection to this. 1370 1371

Mr. Van Arkel: I think I will tie this in later, Mr. Weinberg, and you, of course, have a right to object whenever you like. Will the Examiner reserve ruling on this until we tie it in?

Trial Examiner Perring: I feel this way about it. I would like to go along—this is

not a jury case, and the Examiner can strike
1372 out anything that he decides is inadmissible. I would suggest that if you have any specific objection over and above the objection you voiced generally that you just make the objection, take an exception if the ruling is adverse, and let it go at that.

Mr. Weinberg: We do object to any conversation over a phone with an unnamed and unknown party.

Mr. Van Arkel: This is preliminary to something else.

1373 Mr. Weinberg: I can't help it. You and I as lawyers know that it is highly inadmissible. I cannot allow you to do that even before a Board that is not bound by the rules of evidence.

Mr. Van Arkel: As I said, I do not think the Examiner can rule on this at this time because I have not tied it in. Obviously, we have to start somewhere. Will the Examiner admit this subject to later ruling?

Trial Examiner Perring: I have no de-
1374 sire to complicate this situation by hampering counsel at all and, as I say, I am perfectly willing to let the testimony be given, and I will hear it subject to general objection, subject to specific objection, and you will have to depend on the Trial Examiner to exclude it from consideration if he decides that it is not admissible.

Q. (By Mr. Van Arkel) Will you tell us, then, Mrs. High—Will you read the last of her testimony,

Mr. Reporter? A. That is all about this phone call. I said I hung up. 1375

Q. Did you make any attempt to trace that call? A. Yes. I went to my foreman two or three days afterwards. I don't remember what day it was.

Q. What was his name? A. Jack Chafnas. I went to him two or three days afterward and I asked him if he knew anything about this call. I told him about it. I reminded him that I was not there on the day that the paper was passed around. I didn't know anything about it. I was sick in bed. He asked me, "Did someone actually do that?" And I said "Yes". He said, "Mrs. High, I am not 1376
laying off any of my girls for not signing the paper, because it was not gotten up in the office, but it was gotten up by some employee in the shop." I said, "Well, then"—we talked on general lines of the Union and different things. I told him that so far as the paper was concerned, there was nothing in it for me, and I would not have signed it if I had been there, but I can understand it. He said—I said, "As far as the Union people are concerned they don't bother me. I think the Union is a good thing. I have been to the meetings." He said, "Oh, you have been to the meetings?" I 1377
said, "Yes". He said, "Well, Mrs. High, as you have acknowledged that you have been to the meetings we can talk about it—I can talk to you about it." He says, "Why do you go to the meetings?" And I didn't answer. He says, "Don't you know if they find it out downstairs you will be fired?" I said, "Well, Jack, I don't feel like that is anybody's business but mine." I said, "When I came here I didn't sign any agreement with Mr.

Marks or Mr. November or anybody else as to
1378 what I would do when I left work." He said, "That is true, but you are going against the company, Mrs. High." He said, "They will not tell you but", he says, "some morning I will come around and I will begin to do this and this and this", signifying that he would tear my work to pieces—bad work—and just fire me on those grounds. That is the way I took it.

Q. Had you been active in Union work, Mrs. High? A. Yes, sir, very active.

Q. Did you attend all the Union meetings after yo ujoined? A. After I joined I attended all the
1379 Union meetings except one, and I was sick on that occasion.

Q. How often were those meetings held? A. Once a week.

Q. Did you make any calls or attempt to persuade other employees to join the Union? A. Several.

Q. Did you persuade other employees to join? A. No, I didn't persuade anyone.

Q. On what day was your employment with the company terminated? A. October 25th.

1380 Q. October 25th? A. 1935.

Q. By whom was your employment terminated? A. Jack Chafnas.

Q. Will you tell us what the conversation was at the time you were laid off or discharged? A. He called me aside and said, "Mrs. High—

Q. (By Mr. Weinberg) What date was that? A. October 25th. He said, "Mrs. High, it has come." I said—

Q. (By Trial Examiner Perring) Who said this?

A. Mr. Jack Chafnas. He says, "Mrs. High, it has come." I said, "What about it?" He says, "I don't need to go to a lot of explaining. You understand." I said, "Yes, I do, but I haven't got anything to be sorry for and nothing to regret. Since I have been here I have tried to do my work the very best I could and give satisfaction, and I know that is not why you are firing me." He said, "You are not being fired, Mrs. High. You know the work is slow." I said, "Yes, if the work was slow I would be one of the last to be laid off as was usually the case since I have been here." He said—I don't what else he said. I said, "You can't fool me. I know you have been fighting against this for several days." He said, "What makes you think so?" I said, "Well, I saw Mr. November up here yesterday and today both, and I know you all had an argument", and he said, "I didn't say so." I said, "I know you didn't say so. I don't expect you to, but I know a plenty and if it comes to a showdown I expect to tell all I know, and I won't tell anything but what is true." He said, "Well, Mrs. High, you would not mention me?" I hesitated and then I said, "Well, Jack, you know you are discriminating against me." He said, "Mrs. High, I am not discriminating against you. I have nothing to say against you. If it comes to that I have never—I have nothing but the highest respect for you." I said, "Jack, I am not speaking of my character, but I am speaking of my Union activities." He said, "All I have said to you, Mrs. High, was about eight weeks ago, that you would be laid off for Union activities on the job." I said, "Well, Jack, have you seen me going around from one place to an-

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other, or have you heard me talking about the Union
1384 to anyone?" And he said, "No, I haven't." I said, "Then you don't have to lay me off without a cause."

Q. (By Mr. Arkel) Was that all the conversation, Mrs. High? A. Then I said, "You don't say that I am being fired, but I will go down and talk to Mr. November and I will see what he has to say. He is the superintendent and he should know why I am being fired." He said, "Talk to Mr. November. You are due an explanation." I started down. When I did Mr. November came up into
1385 the department where we were talking and I said, "Mr. November, I want to see you." He says, "You want to see me?" I said, "Yes. Jack says I am being laid off for slow work." I said, "I want to know what it is all about." He says, "Well, ask him. He is doing it." I said, "I know, but he says it is slow work and I am the oldest one on the job. I don't understand why I am being the first one laid off." He said, "Ask Jack. He is the boss." I says, "I know he is my boss but you hired me." He says, "I hired you. How long have you been here?" I said, "Something like five years." He said, "I must
1386 have picked a right good worker." I said, "If I am such a good worker why am I being laid off before the rest?" I said, "I would like to know when I ac coming back." Then Jack said, "Well, you know, November, the work is slow and we are not working any more until Wednesday", but my operation was going to work on Monday. He said, "Yes". I said, "Well, if you won't tell me when I am coming back I would like to have my pay. I figure that I am being fired, and I want my check." Mr. November told Jack to give me my check.

Q. Was the work slow before you were laid off? A. It was not slow enough for me to lose any time only just while they shut up the whole shop sometimes one day out of the week. 1387

Q. Was the whole shop shut down at the time you were laid off? A. No, sir. We were supposed to go to work on Monday morning—the button sewers were.

Q. What day of the week were you laid off? A. On Friday.

Q. Your department was to return to work the following Monday? A. The whole department was to return to work on Wednesday but the button sewers was to return to work on Monday. 1388

Q. Up to this time you were laid off was it true that you had always been the last one laid off? A. Yes, sir.

Q. Did you observe Mr. November and Jack Chafnas in argument before you were laid off? A. Yes, sir.

Q. When was that? A. The day before.

Q. Did you overhear any of that argument? A. All I heard was Mr. November said he knew it to be a fact, and what made me notice it so particular was that he came and stood close by and looked our table over. Mr. November hardly ever did such a thing and it made me suspicious. 1389

Q. Had you been more active in Union work than the other button sewers that worked at your table, Mrs. High? A. I could not say.

Q. So far as you know? A. So far as I know, I was.

Q. You were? A. Yes, sir.

Q. Do you know whether anyone was put on your

job after you were laid off? A. I haven't heard
1390 of anyone.

Q. You haven't heard of anyone being put on your job? A. No, sir.

Q. Have you returned to the plant at any time since October 27th? A. No, sir.

Q. Have you at any time had any conversation after that with any of the officers of the plant? A. No, sir.

Q. Is Mr. November here in the court room? A. Yes, sir.

Q. Was anyone else laid off at the same time that you were laid off? A. Yes, sir, one.

1391 Q. What was that? A. Mrs. Edna Hicks.

Q. What was Mrs. Hicks' position with respect to seniority on that operation? A. The last one.

Q. Was Mrs. Hicks a member of the Union? Do you know? A. Yes, sir.

Mr. Van Arkel: Your witness, Mr. Weinberg.

Mr. Weinberg: I move to strike out from the lady's testimony all conclusions and hearsay and all those portions which are clearly inadmissible, and we move to strike out the
1392 entire testimony as well on the ground that it is incompetent, irrelevant and immaterial.

Mr. Van Arkel: Off the record.

Trial Examiner Perring: Off the record.

(There was a discussion off the record.)

Mr. Wirin: May I suggest to the Examiner and to Mr. Weinberg this, Mr. Weinberg and all of us know that a general motion to have the Examiner strike out such portions of the witness' testimony as are

clearly conclusions is not at all valid because it is necessary to point out a particular portion of the witness' testimony and then make objection to that. 1393

Mr. Weinberg: I understood you did not want me to do that and that is why I did not do it. I understood you wanted me to allow you to go ahead without interruption and to simply make my objection at the end. I am trying to do that for your convenience. I can punctuate all of these witnesses' testimony with formal objections if you wish, and I shall do that hereafter if you wish me to do that. 1394

Mr. Wirin: I assumed that your general objection which you made at the very beginning was sufficient. Now, coupled with your motion to strike, your rights are fully protected, in as far as you have any.

Mr. Weinberg: Well, I don't suppose we have very many.

Trial Examiner Perring: Well, I think you have all of your constitutional rights. You certainly have as far as the Trial Examiner is concerned. This testimony will be admitted and the objection overruled and an exception noted, and the motion to strike out is denied and an exception is noted. 1395

Mr. Weinberg: Thank you.

(Witness excused.)

Mr. Van Arkel: Mr. Morgan.

ROBERT L. MORGAN, called as a witness for the
1396 National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Van Arkel) What is your name? A. Robert L. Morgan.

Q. What is your address? A. 402 North Tenth Street, Richmond, Virginia.

Q. When did you first become an employee of the Friedman-Harry Marks Clothing Company? A. In April, 1932.

1397 Q. What was your job? A. Body presser.

Q. Did you stay on that job as long as you worked at the plant? A. No, sir.

Q. To what other job were you transferred? A. Arm-hole presser.

Q. When were you transferred to that job, Mr. Morgan? A. About three months before I was fired.

Q. How many arm-hole pressers were there? A. Ten.

Q. Where did you rank in point of seniority in the plant among those ten arm-hole pressers?
1398 A. I was put back on body pressing before I was fired.

Q. I see. How long before you were fired? A. About a month.

Q. When was your employment terminated? A. November 8th.

Q. Did you at some time become a member of the Amalgamated Clothing Workers of America? A. I did.

Q. When? A. Some time in the early part of July.

Q. Do you remember the exact date? A. I do not. 1399

Q. Have you been active in the affairs of the Union? A. I have been rather active.

Q. Did you attend meetings? A. I did.

Q. Do you know how many meetings you attended? A. I don't know how many. I didn't miss any.

Q. You attended all of them? A. Yes, sir.

Q. Have you made calls on others in an attempt to get them to join? A. Yes, sir.

Q. Had you spoken to other employes about joining the Union? A. Yes, I had spoken to them. 1400

Q. Was a petition in the form of Exhibit 2 in the former case, V-C-1, circulated to you in the plant? A. It was.

Q. When was that presented to you? A. August 1st.

Q. By whom was that presented? A. It was brought to me by a boy named Jack.

Q. Do you know his last name? A. No, I don't.

Q. Do you know his position in the plant? A. Yes, he kept the coat cleaners supplied with work.

Q. What time on August 1st did you first observe Jack with this petition? A. In the morning. 1401

Q. About what time? A. I should say about 10:00 o'clock.

Q. Did you observe Jack's activities after that? A. You mean after he left me?

Q. No, after you first saw him. A. After I first saw him, then I seen his activities. I seen him that day.

Q. Would you describe those activities to us? A. He went around to the coat cleaners first, in the same department with the pressers, and tried

to get them to sign up, and very few signed the
1402 paper, so he went around to some of the pressers and some of those signed it. Then he went until lunch-time, and they did not all sign it, and so he came back after luncheon, at a quarter to one, and asked me to sign it again, and finally he succeeded in getting all of them to sign it, but they brought up two more people from the pants department to get them to sign it.

Q. Who were they? A. Alma Muck and Alice Gibson.

Q. What was Alma Muck's position in the plant? A. I don't know.

1403 Q. What was Alice Gibson's position? A. I don't know either one's position. They work in the pants department.

Q. Have you learned what their positions are? A. I have not. I seen them at work in the pants department.

Q. Did you overhear any of the conversation between Jack and any of the cleaners? A. I didn't hear any of the conversation, but while they were discussing signing the paper one girl fainted and Mr. November came up then and Sam Trimmand, Mr. Leight and Mr. Stahl.

1404 Q. What is Mr. November's position in the plant? A. I think he is general superintendent.

Q. What is Mr. Stahl's position? A. I don't know what his position is.

Q. Is he engaged in a supervisory capacity? A. Yes, he is.

Q. What is Mr. Leight's job? A. He is over Mr. Stahl.

Q. How would you designate him? A. How?

Q. What would you call him? A. They are coat-makers. 1405

Q. I say, what is Mr. Leight's job? A. I don't know what his specific job is.

Q. Is he engaged in a supervisory capacity? A. He told me what to do in lots of instances, however.

Q. Have you told us what Mr. Samuel Trimm's job is? A. Foreman.

Q. Of what? A. Of the coat pressing department.

Q. What did Mr. November say when he came up? A. He said, "What is going on up here?" They were trying to get the girl, too, and she 1406 passed out. He told them to carry her, where to carry her, and they carried her there, and they come on back and talked a little bit and then they walked off.

Q. At what time was this petition presented to you? A. This petition was presented to me about 2:00 o'clock.

Q. Two o'clock in the afternoon? A. Yes, sir.

Q. Will you repeat the conversation that occurred between you and Jack? A. Jack told me to sign a paper, and I asked him what was it, and he said, "A petition the employees got up saying 1407 we are all satisfied with our jobs and pay, and don't want any unionizer or any organizer to mess with us at our home, and quit bothering us." I said, "No, I was not so satisfied." I told him I would not sign the paper. He said—

Q. (By Trial Examiner Perring) When did all of this occur? A. August 1st.

Q. August 1st, 1935? A. Yes, sir, and on into August the 2nd. There was two days they had this petition going around.

Q. (By Mr. Van Arkel) What was the rest of
1408 the conversation? Did you finish that conversation? A. Where was I?

Q. The conversation you had with Jack at the time the petition was presented or circulated. A. That was all then. The next day Mr. November came around and asked me, wasn't I satisfied, and I told him, no, I was not satisfied, not the way things was at the time.

Q. That was on the next day? A. Yes, August 2nd.

Q. Was that all the conversation that occurred then? A. That was all that day.

1409 Q. Did you speak to anyone else about this petition on August 1st? A. Yes, I did. The girls asked me at lunch-time, the cleaners, did I sign it, and I said, "No." I asked one of the girls, did she sign it, and she said she did, that they bothered her so much that she thought she better sign it.

Q. On August 2nd did you talk to anyone except Mr. November about the petition? A. Yes.

Q. Who? A. Bill Newton.

Q. Where did that conversation take place? A. He went to a boy named George Stahl and asked him why he didn't sign it. I don't know what
1410 George told him. Then he came to me. I told him that I was not satisfied and that was the reason I didn't sign it. That seemed to be what the paper was for, if you were satisfied with your job, and things like that, and I told him, "No, I wasn't, and the reason I wasn't was that the pay was different every week. I didn't know what I was going to draw, and the hours were getting bad and I was not exactly satisfied." He said, "O. K.", and walked off.

Q. What was Bill Newton's job at the time? A. He presses—I don't know what part of the 1411
coat he presses.

Q. Does he have any other duties? A. Yes, he drives Keeve Marks' car.

Examination by Trial Examiner Perring

Q. (By Trial Examiner Perring) Were you present when he asked George to sign this? A. Yes, I was present.

Q. You were right there? A. Yes, sir, about as far as—a little farther than the window (indicating) when he asked him. 1412

Q. You were present and heard him ask George to sign it and heard George refuse? A. Yes, sir.

Q. And then he asked the other question? A. He didn't ask George to sign it. He asked him why he didn't sign it.

Q. (By Mr. Van Arkel) Who is Keeve Marks? A. He is a brother to Mr. Morton Marks.

Q. Is Keeve Marks an officer of the company? A. I don't know. I know he is salesman. I don't know whether he is an officer or not.

Q. Had there been any change in the wages since the N. R. A. was declared unconstitutional? A. 1413
Yes, there had. That is the reason I joined the Union.

Q. What change had there been? A. I had been working for anywhere from $20.00 to $22.00 or $23.00 where I should have been making $27.00, and they put me on arm-holes, and I was not very fast the first time, and they paid me $17.00, and I said I would not work for that, and so I joined the Union before I quit.

Q. Did you sign this petition (indicating)? A.
1414 No, sir, I did not sign the petition.

Q. At that time were you working on arm-hole pressing? A. No, body pressing, and then arm-hole pressing at that time.

Q. Were there any of the arm-hole pressers who did sign the petition? A. Yes, quite a few of them.

Q. Do you know whether those who signed the petition received the same wages as those who did not sign the petition? A. No, I do not.

Q. Is there anything that leads you to believe that they did not? A. That those that signed the paper did not draw as much as those that did?
1415 Q. Yes. A. No, nothing that I could say. The evening after the paper was—that was August 1st that the paper came around to us, and on August 2nd Mr. November came around that evening, and Sam Trimm, the foreman, came around—

Q. Came around which evening? A. August 2nd, in the evening—about 3:00 o'clock. He went to all the old employees, and was writing something in a book. He came to me. He had about 18 new employees. He did not bother about those. He understood that I was not satisfied.

Q. Did he say that? A. Yes.
1416 Q. Will you repeat the conversation? A. Mr. November says, "I understand you are not satisfied, Morgan." I said, "I haven't said I wasn't satisfied." He said, "That is what I understand." He said, "What is the matter?" I says, "Well, you put me on arm-holes. I am not fast on them", I says. "All the time on bodies I made anywhere from, sometimes, $35.00 or $40.00 or $45.00." He says, "Yes, you were a good man on bodies. You do good work. I wish I had more men like you." He says,

"Why aren't you satisfied?" I says, "This week I draw $17.00 for a full week. I can't hardly be 1417
satisfied with that. It has been dropping down. For two years I drew $27.00, and I made bills those two years, naturally, but I can't hardly pay them on $17.00 per week." I said, "Of course, you aren't concerned with my bills." He said, "Oh, yes, I am. I don't want you to feel that way. How many hours did you work this week?" I told him, "Thirty-five hours and fifteen minutes." He says, "15 minutes? You talk like you got a chip on your shoulder, calling off 15 minutes." I said, "You asked me and I told you exactly." He said, "Well, how much have you made this week?" And I 1418
said, "$19.00." He says, "What would you consider?" I says, "What do you mean, consider?" He says, "What would you consider?" I said, "I don't consider anything." He says, "I will give you half of what it takes to make $27.00." I says, "I appreciate it very much, but I don't want you to feel that I have a chip on my shoulder, because I am for the company 100 per cent." That is what I said on that day.

Q. When was your employment with the company terminated? A. November 8th.

Q. November 8th? A. Yes, sir. He called me 1419
up on Monday.

Q. Who is "he"? A. Mr. November.

Q. Were you laid off or discharged? A. I was fired.

Q. By whom? A. By Mr. November.

Q. Would you repeat what happened on the day you were fired? A. Yes, sir. Mr. November and Sam Trimm was standing and talking at the lower end of the room, and then Sam Trimm a few

minutes later came over and handed me a check
1420 and he said, "What is the matter?" I said, "I don't know." He said, "There must be something the matter." I said, "Not that I know of." He said, "Mr. November says you are fired. Go on over there and he will give you a backpay check." I went over and then we went on downstairs.

Q. With whom did you go downstairs? A. Mr. November, and he came out with the check. I says, "What are you firing me for?" And he says, "You know without asking me what for." I said, "I thought maybe it might be my work." He says, "No, it is the Union."

1421 Q. Was there any more of the conversation than that? A. That is all there was to it.

Q. Did he elaborate on that at all? A. He didn't say anything else and I didn't say anything else. I went back that evening and asked for my job back.

Q. What time was that? A. That I went back?

Q. Yes. A. He fired me about 1:30 and I was back there between 3:30 and 4:00 o'clock.

Q. Would you give us the conversation at that time? A. I asked him for my job back and he said, "You have been right straight down to the
1422 Union and they sent you back up here." He says, "You didn't even ask me, or wasn't afraid or wasn't scared, or nothing else. You didn't intend to come back for it then when I fired you. You walked on out then." He says, "You came come back some other time."

Q. Had you had any conversation with anyone else? A. Mr. Morton Marks. He wanted to give me another chance.

Q. Was Mr. Morton Marks in on this conversation? A. Yes, he was there for a minute.

Q. What happened while he was there? A. He asked Mr. November to give me another chance, and Mr. November said, "I have done given him enough chances." 1423

Q. Did you have any conversation with any officer of the company in which the Union was mentioned any time before you were discharged? A. No, nothing except Tony, the assistant foreman to Sam Trimm, told me that I had turned Bolshevik. I don't know whether that had anything to do with the Union or not. He said that I was accepting money for nothing. He told me not to mess with the Union on one occasion—Tony did. He knew all about it from up in New Jersey and New York. He says, "Keep your nose clean and don't mess with the Union." 1424

Q. Who said that? A. Tony Costello, the assistant foreman to Sam Trimm.

Q. Was anyone else discharged on the same day that you were discharged? A. Not on the same day. Another presser was discharged on Monday of that same week.

Q. On what day was that? A. On Friday.

Q. Who was that who was discharged on Wednesday? A. Isaac Kenny.

Q. Was he a Union member? A. Yes, sir. 1425

Q. Did you have any conversation with anyone about Mr. Kenny? A. Not then—except Mr. November.

Q. You talked to Mr. November? A. Yes, the same day that he fired Kenny.

Q. What was that conversation? A. He called me and told he me was going to fire everybody that was Union, and wanted to know how I stood. He said that I was either for him or for the Union,

and I told him that I was for him and that I had
1426 not been to the Union for three weeks. We shook hands after we talked. We talked about Kenny, and he said that he was going to fire Kenny, and he asked me if I had anything to do with Kenny joining and I said, "No."

Q. Was Kenny discharged on that day? A. Yes.

Q. What was that date? A. Ten minutes later. That was Monday—Friday was the 8th. That was the Monday before.

Q. That would be November 4th? A. That is right.

1427 Q. Then Kenny was discharged on that date? A. He was, ten minutes later after Mr. November told me he was going to fire him.

Q. Did anyone take your place after you were discharged? A. I was told they did, ten minutes after I was gone.

Q. Do you know who took your place? A. No, sir, I don't.

Q. Do you know whether it was a Union member? A. The body pressers was not Union men. I imagine he was not. I was next to the oldest man on bodies. They had five men.

1428 Q. They had five men? A. Yes. I pressed all the samples while I was there, for the latter part of the year.

Q. Have you at any time returned to that plant since you were discharged? A. Two times.

Q. Two times? A. Yes, sir.

Q. When was the first time that you returned to the plant? A. This past Wednesday a week, and last Saturday.

Q. Whom did you see when you went there

Wednesday a week ago? A. Mr. Morton Marks and Mr. November. 1429

Q. Could you give us the conversation at that time? A. I asked Mr. Morton Marks would he give me another chance at my job, and he said, "Wait and I will call November." He called Mr. November and he said, "This is sort of sudden, and things have changed a little bit. Suppose you give us a chance to think it over until Saturday morning, and then come back Saturday morning. So I came back Saturday morning and Mr. November came in after I was there awhile, and asked would I mind waiting on Farley Holder, and I told 1430 him, all right, and at 9:30 he took us up to his office and talked to us about an hour and a half.

Q. What was the substance of the conversation? A. This case of the Union, and most everything like that.

Q. What did they say about the Union, or what was said about the Union and by whom? A. Only the three of us talked, Farley, November and myself, and he said that he would not take one of us back unless he took all of us back, and Farley told him, "Well, I have absolutely withdrawn from the Union," and Mr. November says, "You want me to 1431 know that you haven't anything else to do with it?" And he said, "That is right." I said, "I haven't completely withdrawn from it, Mr. November. I could not afford to do that all at once unless I knew you weer going to put me back to work." He said, "Well, I will send word to you when I want to talk to you again." He was mighty nice that day.

Q. Was that all the conversation at that time? A. Yes, was that all.

Q. Those are the only times you returned to the
1432 plant since you were fired? A. That is right.

Q. Have you received any calls to come back to work? A. No, sir.

Q. Is Mr. Morton Marks in the court room? A. Yes, sir.

Q. Will you point him out? A. Yes, he is over there (indicating).

Mr. Van Arkel: Have you any questions of the witness, Mr. Green?

Mr. Green: Have you finished with the witness?

1433 Mr. Van Arkel: Yes, sir.

Mr. Green: I move that the testimony of this witness be stricken out because it is incompetent, irrelevant and immaterial.

Trial Examiner Perring: The same motion as before?

Mr. Green: The same motion.

Trial Examiner Perring: The same ruling.

Mr. Green: The same exception. I have no cross examination.

1434 (Witness excused.)

Mr. Van Arkel: Mr. Owen.

J. WESLEY OWEN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Mr. Green: The same objection to this

witness' testimony at the beginning of his testimony. 1435

Trial Examiner Perring: I am very anxious that this case should go, when it does to the Board, —that it go as nearly correctly as possible. I notice that sometimes counsel is asking questions which, I think, he knows are improper. I will ask him to carry his line of questioning as nearly to the rules of evidence as he can do, and that will make my job just a little easier.

Mr. Van Arkel: Very well, Mr. Examiner. I haven't intentionally done so. 1436

Trial Examiner Perring: As that is going into the record I want to say that quite a number of times when a question has been asked the answer has been such that it has been a very innocuous reply anyhow, but in any event it would be of benefit to the Trial Examiner if counsel would stick as closely to the rules of evidence as he can.

Mr. Van Arkel: All right.

Q. (By Mr. Van Arkel) What is your name? A. J. Wesley Owen.

Q. What is your address? A. 2314 East Grace Street. 1437

Q. When were you first employed by the Freidman-Harry Marks Clothing Company? A. March, 1934.

Q. What was your position at the time you were hired? A. I was an under presser.

Q. Were you an under presser during the period you were working for the company? A. Yes.

Q. How many under pressers were there? A.

There were three when I went there and there were
1438 five when I left.

Q. What was your position with respect to seniority? A. I was the oldest man there.

Q. You were the oldest man of the five? A. Yes, sir.

Q. Had you been selected for special work at any time? A. No, sir, I would not say I had been.

Q. Did you at some time become a member of the Amalgamated Clothing Workers of America? A. Yes, sir.

Q. When did you become a member? A. August
1439 10th.

Q. What year? A. This year.

Q. Were you asked to join, by anyone? A. No, sir, I was not.

Q. How did you become a member? A. Well, I heard of a meeting— several that had been held, and I went through curiosity, I suppose, the first time I went. It was through curiosity that I went to the meeting the first time and after I went and heard the speakers talk I thought it was a good thing.

Q. Did you then become a member? A. Not
1440 that night, no, sir.

Q. When did you become a member? A. About three or four days after that. In other words, the meeting was in the middle of the week and it was the last of the week. I asked the organizer if he had any cards and he said, "Yes." I said, "Let me see them." And he handed me one, and I read it and signed it.

Q. Were you presented at any time at the plant with a petition in the form of Exhibit No. 2? A. Yes.

Q. You were? A. Yes, sir.

Q. Do you recognize this Exhibit No. 2 in the 1441
first case, V-C-1, as a copy of the petition that was presented to you? A. Yes, sir.

Q. By whom was this petition presented to you? A. Miss Alice Gibson.

Q. What was Miss Gibson's position at the plant? A. She ran a machine. I don't know what she sewed— in the pants department.

Q. Did she have any other duties? A. Not that I know of.

Q. Would you tell us what she said and what you said at the time that petition was presented to
you? A. She came around down the line of men, 1442
and some of them read it and signed it and some did not. I read it and handed it back. She said, "What is the matter? Aren't you going to sign it?" And I said, "No." She said, "Why shouldn't you?" And I said, "Because I am not satisfied," and she said, "What is the reason you are not satisfied?" "I am not getting enough money," I says. She said, "You are getting as much as you have been getting and everybody else is signing it. You better sign it." I said, "No, I am not getting as much as I have been getting because I am not getting as much
work." There was not but three of us on the opera- 1443
tion, and I had as much work as on the day after they put five on there, when we had to wait for it. And I handed it back to her. That was at quitting time in the afternoon. Then she called another girl that day— there was two copies of it. You know what I mean. In the plant one may be going down one side and one going down the other side.

Q. What was the name of the other girl? A. Alma Muck.

Q. Do you know what her position in the plant
1444 was? A. No, sir, I do not.

Q. On what day was the petition presented to you? A. August 1st.

Q. Of what year? A. This year.

Q. 1935? A. Yes, sir.

Q. Did you sign the petition? A. No, sir.

Q. Have you been active in Union affairs? A. What do you mean— at that time?

Q. Well, at any time after you joined the Union were you active? A. Yes, I was.

Q. Were you active in the Union after you joined it ? A. Yes. I talked to some people about it. I
1445 told them what I thought of it.

Q. Did you attend the Union meetings? A. Yes.

Q. About how many Union meetings did you attend? A. From the time I joined until now I think I missed two.

Q. You missed two meetings? A. I missed two meetings.

Q, How often are those meetings held? A. Once a week.

Q. Have you made any calls on other employees in reference to that? A. Yes.

Q. How much time have you spent on that? A.
1446 I haven't spent very much.

Q. What is that? A. I had not spent very much.

Q. Had not? A. No. sir.

Q. On some date was your employment with the company terminated? A. September 27th.

Q. Would you just answer that yes or no? A. I did not get it.

Q. Was your employment with the company terminated at some time? A. Yes.

Q. When was that? A. September 27th.

Q. September 27th? A. Yes, sir.

Q. Had you been working steadily until September 27? A. Well, on September 25th I did not go in to work. I was sick. On September 26th I went in to work and there was not very much work on the floor. They would work 30 minutes and then they would have to wait 5 minutes. About 10:30 Mr. Huffman, my foreman, came along— I was at the machine waiting for work. He says, "Owen, you take the rest of the day off." I said, "All right", and I got my hat and coat and went off. I understood that he said to take the rest of the day off and that I was to come back the next morning. Then he sent word by my wife that night that I was not to come in until Monday. That was Thursday or Friday. That was all right. 1447 1448

Q. What day of the week was that? A. That was on Thursday that he sent me this word. He sent me home Thursday morning about 10:00 o'clock, and before quitting time he told me not to come in on Friday.

Q. (By Trial Examiner Perring) Does your wife work in the plant? A. Yes, sir.

Q. And your wife told you what? A. She told me that Mr. Huffman told me not to come in until Monday. So when she came home she said that Mr. Huffman says, "You are not to come in until he sends for you." 1449

Q. (By Mr. Van Arkel) Who said that? A. My wife told me. So on Monday and Tuesday of next week the department did not work. We were not going in until Wednesday morning in the pants department. I went in Wednesday morning to see Mr. Huffman— why I was laid off. He had said not to come in until he sent for me. When I

went in he said, "Heigh, Colonel," which was some-
1450 thing unusual for him. He generally grumbles around me. I don't think he liked me much. I walked over. He hung up his coat. I walked over to the table and I said. "Why am I laid off? I came up to see why I was laid off and the rest kept on the work. I was the oldest man on the job." He says, "Yes, I know that." He said, "I laid you off on account of a remark you made the other day." I said, "What was it?" He said, "You stood right over there at your machine and said you did not care if they nailed the back door." He said, "You said, 'I don't care if the company
1451 nails up the door.'" I went on to explain why I said it; that it was just a bunch of us workers and all of us were waiting for work, that they were complaining about they did not have no work and didn't know what they were going to do and were wondering whether they were going to work tomorrow or not. They were just complaining, and that I said, "It don't make any difference to me if they nail the door. I can't make a living working two or three days a week."

Q. You made that remark? A. Yes, but it was
1452 just talking. I was not talking to any boss or anybody that I thought had anything to do with it—just the boys that I was working with.

Q. Was anyone else laid off on your operation at that time? A. Yes, Albert Rogers left the same day that I did.

Q. What day was that? That was on September 25th—the 26th, because he went home that morning sick, and he came back in some time that week and they laid him off. He stopped working the same day that I did.

Q. Have you returned to the plant at any time since your lay-off? A. No, sir. 1453

Q. Have you been called back to work at any time? A. No, sir.

Q. Do you know of your own knowledge whether or not your operation has been working? A. No, I can't say that I know it because I have not been in there. The only way I would know it is to see it, but they tell me that it is.

Trial Examiner Perring: Strike that out.

Q. (By Mr. Van Arkel) Do you know of your own knowledge whether anyone was put on your 1454 job after you were discharged—after your lay-off? A. No, sir.

Q. Before you were discharged and after the N. R. A. was declared unconstitutional had your wages been changed? A. No, sir, only putting more people on the operation. I could not get the amount of work.

Q. They put more people on the operation? A. Yes.

Q. By how many men did they increase the operation? A. One, at that time. About that time it 1455 was four on the operation and they put the fifth one on.

Q. Did you ever at any time have any conversation with any of the supervisors in the plant about the Union? A. No, sir, I never mentioned it.

Mr. Van Arkel: I think that is all.

Mr. Green: The same motion.

Trial Examiner Perring: The same ruling.

Mr. Green: No cross examination.

1456 (Witness excused.)

Trial Examiner Perring: We will take a short recess at this time.

(A short recess was taken.)

Mr. Van Arkel: I will call Mr. Rogers.

ALBERT J. ROGERS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

1457

Direct Examination

Q. (By Mr. Van Arkel) What is your name? A. Albert J. Rogers.

Q. What is your address? A. 3315 East Marshall Street.

Q. When were you first employed by the Friedman-Harry Marks Clothing Company? A. July, 1935.

Q. When? A. July, 1935.

Q. What date in July? A. I don't know the

1458 approximate date. Around the latter part of July.

Q. What was your job in the plant? A. Under presser (curtains).

Q. How many men were employed on that operation? A. Five.

Q. What was your position among the five with respect to seniority? A. I was the newest on the operation.

Q. How long before you were hired were the other five hired? A. What was that last question?

Q. How long before you were hired were the other four hired? A. I was the last one on the job. I haven't any idea as to that. 1459

Q. Did you at some time become a member of the Amalgamated Clothing Workers of America? A. Yes, August 13, 1935.

Q. Did you join during a meeting? A. No, sir.

Q. Where did you join? A. At my house.

Q. What happened at your house? A. We had a little social get-together party, the employes of Harry Marks Clothing Company.

Q. How many were present? A. About twelve.

Q. Were any representatives of the Union present? A. Yes. 1460

Q. Who was present? A. Miss Hilda Cobb and Dr. Webber and Farley Holder. That is all.

Q. Did you attend any Union meetings after you joined the Union? A. No, sir.

Q. Did you make any calls on the employees in an effort to get them to join the Union? A. No, sir.

Q. Was the petition in the form of Exhibit No. 2 in the former case, V-C-1, presented to you at any time? A. Yes, sir.

Q. I show you Exhibit No. 2 in the former case, V-C-1, and ask you if a petition in that form was presented to you? A. Yes, that was presented to me. 1461

Q. On what date was that presented to you? A. August 1st.

Q. By whom? A. Miss Alma Muck.

Q. Do you know of your own knowledge what Miss Alma Muck's job is in the plant? A. She works on the sewing machine. What she does I don't know.

Q. Do you know of your own knowledge whether
1462 she has any other duties? A. No, sir.

Q. Will you repeat the conversation you had with Miss Muck at the time this petition was presented to you? A. She presented it to me the first time and I told her I would sign it.

Q. What time of the day? A. In the afternoon —right after luncheon, and she went on away, and presently she come back and got to talking to the pressers and myself, and she asked me for my signature and I said, "No, I did not sign it." She said, "Why haven't you signed it?" I said,
1463 "Because there is statements in there that happened before I came down here." I says, "As far as being satisfied with the work, I was perfectly satisfied, because I had not worked for a year previous to that." She further asked me if I ever belonged to a union, and I told her that I had. She asked me which one, and I told her the Tobacco Union. She asked me, did it do anything for me, and I said, "Well, no, but it has not done anything against me, either." And then she went on away.

Q. Was that the end of that conversation? A. Yes.

1464 Q. Did you sign the petition? A. No, sir.

Q. Was your position with the company terminated at some time? A. Yes, sir.

Q. On what day? A. I got final notice of it September 27, 1935.

Q. Had something happened before that? A. Yes.

Q. What was it? A. On Wednesday, September 25th I was sick and stayed out from work. On September 26 I reported to work and I reported to Mr. Huffman and explained my sickness, and he

said, "You can go home if you want to." I said, "I will try to stick it out." I worked about 35 1465
minutes, and then I went to Mr. Huffman and told him that I did not think I would be able to make the day. He said, "All right, you can go home." I went home, and he sent word by my wife that night—

Q. Did you have some conversation with your wife that night? A. With my wife?

Q. Yes. A. No, I did not have any conversation with her. I just went down to her in the plant before I left and said that I was going home, that I was not able to work, and that Mr. Huffman told
me that he would let me know by my wife when 1466
to come back.

Q. Mr. Huffman at the time you left told you that he would— A. Let me know by my wife when to come back. He told me that. He came right down behind me while I was talking to my wife. By him coming down I went on out, and Friday evening I was feeling a little better, and I came up to get my check, and he gave everybody else their checks.

Q. Did you see him do that? A. Yes. I was standing by the desk. He gave everybody else their
checks, and gave me mine, and said, "I will send 1467
for you when I need you. I will let you know by your wife." I waited around and when my wife got her check Mr. Huffman did not need her any more either. That was September 27, 1935. Both of us were laid off.

Q. Have you been back to the plant since that time? A. Yes, once.

Q. When was that? A. We were sent for by Mr. November.

Q. Let me ask this first. When was it that you
1468 went back to the plant? A. I don't know the approximate date. It has been about two or three weeks ago. It was in November.

Q. Did you go there of your own volition or were you asked to come there? A. We were asked to get together by Mr. November.

Q. Did Mr. November ask you to come to the plant? A. Not me personally, but he sent word by—

Q. Just a moment. Didn't anyone tell you to go to the plant? A. Yes.

Q. Who told you that? A. Mrs. Clemmie Shuck.

1469 Q. What was the conversation that you had with Mrs. Shuck? A. That several of the members had been sent for and that Mr. November told them to round up everybody that belonged in the pants department that had been laid off, to come up there, that he wanted to have a talk with them.

Q. Did you go to the plant? A. Yes.

Q. Whom did you see there? A. I seen Mr. November.

Q. Did you have some conversation with Mr. November? A. A little bit; not much.

1470 Q. Would you tell us what you said and what he said? A. He started off and asked why—I mean just how I felt about the Union, and I did not give any particular reason because I kept that to myself.

Q. Was that all the conversation? A. Yes, that was all. He asked me further if I received money from the Union.

Q. What did you tell him? A. I told him yes.

Examination by Trial Examiner Perring.

1471

Q. (By Trial Examiner Perring) Do you remember just what you said to Mr. November? A. Just what I said?

Q. Yes. Just what did you say? A. The first statements he had me confused. He asked me how I felt about the Union and after I gave him my statement about that, then he asked me if I received—

Q. What did you say? You were confused. You sort of looked down and stuttered a little bit, and then you said something. What did you say? A. Let me think, now. I said, "The Union has treated 1472
me right—treated me nice, just as they had done, and that I did not feel—the way I felt toward the Union was just like I felt toward them. I was with the Union now and I would stick with the Union. If he called me back, which he said he would, then I would be with him."

Q. What did he say? A. He jumped over to the next person and started talking to him.

Q. He didn't say a word? A. No, he didn't say anything. He just jumped over to the next one and says, "How do you feel about it?"

1473

Q. (By Mr. Van Arkel) How many were present at that conversation? A. From eight to ten.

Q. Do you know of your own knowledge whether all of the eight or ten were former employees? A. Yes, sir.

Q. Were all of them former employees? A. Yes, sir.

Q. Was anyone else laid off or discharged on the same day that you and your wife were? A. Why, yes, Mr. Wesley Owen.

Q. Let me ask this first. When was it that you
1468 went back to the plant? A. I don't know the approximate date. It has been about two or three weeks ago. It was in November.

Q. Did you go there of your own volition or were you asked to come there? A. We were asked to get together by Mr. November.

Q. Did Mr. November ask you to come to the plant? A. Not me personally, but he sent word by—

Q. Just a moment. Didn't anyone tell you to go to the plant? A. Yes.

Q. Who told you that? A. Mrs. Clemmie Shuck.

1469 Q. What was the conversation that you had with Mrs. Shuck? A. That several of the members had been sent for and that Mr. November told them to round up everybody that belonged in the pants department that had been laid off, to come up there, that he wanted to have a talk with them.

Q. Did you go to the plant? A. Yes.

Q. Whom did you see there? A. I seen Mr. November.

Q. Did you have some conversation with Mr. November? A. A little bit; not much.

1470 Q. Would you tell us what you said and what he said? A. He started off and asked why—I mean just how I felt about the Union, and I did not give any particular reason because I kept that to myself.

Q. Was that all the conversation? A. Yes, that was all. He asked me further if I received money from the Union.

Q. What did you tell him? A. I told him yes.

Examination by Trial Examiner Perring.

1471

Q. (By Trial Examiner Perring) Do you remember just what you said to Mr. November? A. Just what I said?

Q. Yes. Just what did you say? A. The first statements he had me confused. He asked me how I felt about the Union and after I gave him my statement about that, then he asked me if I received—

Q. What did you say? You were confused. You sort of looked down and stuttered a little bit, and then you said something. What did you say? A. Let me think, now. I said, "The Union has treated me right—treated me nice, just as they had done, and that I did not feel—the way I felt toward the Union was just like I felt toward them. I was with the Union now and I would stick with the Union. If he called me back, which he said he would, then I would be with him."

1472

Q. What did he say? A. He jumped over to the next person and started talking to him.

Q. He didn't say a word? A. No, he didn't say anything. He just jumped over to the next one and says, "How do you feel about it?"

1473

Q. (By Mr. Van Arkel) How many were present at that conversation? A. From eight to ten.

Q. Do you know of your own knowledge whether all of the eight or ten were former employees? A. Yes, sir.

Q. Were all of them former employees? A. Yes, sir.

Q. Was anyone else laid off or discharged on the same day that you and your wife were? A. Why, yes, Mr. Wesley Owen.

Q. Was anyone else laid off on your operation
1474 on the day that you were laid off? A. Yes.

Q. Was Mr. Wesley Owen? A. Mr. Wesley Owen.

Q. Have you observed the people working on your operation since the time you were discharged? A. No, sir.

Mr. Van Arkel: That is all.

Mr. Green: The same motion.

Trial Examiner Perring: The same ruling and the same action.

Mr. Green: Exception. No cross examination.

1475

(Witness excused.)

Mr. Van Arkel: Mrs. Rogers.

ANNIE MAE ROGERS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Van Arkel) What is your name? A.
1476 Mrs. Annie Mae Rogers.

Q. What is your address? A. 3315 East Marshall Street.

Q. When were you first employed by the Friedman-Harry Marks Clothing Company? A. It was in April, 1933.

Q. What was your job? A. Inspector.

Q. Has that job been changed at any time? A. No, sir.

Q. Up to the time you went off the job? A. No, sir.

Q. How many workers' inspectors are there? A. Six. 1477

Q. What was your position among those six inspectors with respect to seniority? A. I was the third.

Q. You were the third of the six? A. Yes.

Q. Had you been selected to do any special work? A. No.

Q. Did you at some time become a member of the Amalgamated Clothing Workers of America? A. Yes.

Q. When did you become a member? A. On the 13th.

Q. Did you become a member at the meeting which your husband has already testified to? A. Yes. 1478

Q. After you joined were you active in the work of the Union? A. No, sir.

Q. Did you attend meetings? A. No, sir.

Q. Did you make any calls on other employees? A. No, sir.

Q. At some time was your employment with the company terminated? A. What do you mean?

Q. At some time did you stop working at the plant? A. No, sir. 1479

Q. Well, are you working there now? A. No, sir.

Q. At some time you stopped work at the plant, then? A. Yes, sir.

Q. When was that? A. September 27, 1935.

Q. By whom were you laid off or discharged? A. Preston Crowder laid me off.

Q. What is his position? A. I would say just a straw boss.

Q. Will you tell us the conversation that occurred

between you and Mr. Crowder? A. That Friday
1480 morning, September 27,—about 3:30 that afternoon, he called me to the end table, where anyone else could not hear him, and he told me that Mr. Huffman had given the order to lay me off, that it was slack and he did not need me any longer. I asked why they were laying me off when there were other girls at the table that had not been working there longer than three months—newer than I was —he said he did not know and that it was Mr. Huffman's affair. I said, "Why didn't he come down and lay me off himself? He was the one that hired me." He said, that he didn't know, and that it was still
1481 Mr. Huffman's affair.

Q. Was that all of the conversation at that time? A. Yes.

Q. Was anyone else laid off on your operation on that day? A. No, sir.

Q. Was it true that there were girls on the operation hired within a month or two before that? A. There was not no girls hired a month or two before. Three months before that there were two girls hired.

Q. Up to that time had it been usual to share
1482 work among all the members of that operation? A. Yes.

Q. Was this the first time that anyone had been laid off on that operation when all were not laid off? A. Yes.

Q. Did you have any conversation about your lay-off with anyone on that day? A. No, sir; no one, only Mr. Crowder.

Q. At any time after your lay-off did you have any conversation? A. With Preston Crowder when he laid me off.

Q. Did you talk to anyone else after that? A. No, sir. 1483

Q. Didn't you discuss this lay-off with anybody? A. No, sir.

Q. Have you been back to the plant since that time? A. Yes.

Q. How often? A. The following Monday after I was laid off I went back.

Q. Why did you go back? A. To ask exactly why I was laid off.

Q. To whom did you talk? A. I wanted to talk to Mr. Huffman. I saw Mr. Huffman and I said could I speak to him a minute, and he said, "Yes." I said, "Mr. Huffman, I want to know exactly why 1484 you laid me off." He said, "On account of slackness", and walked on off. I said, "Is it that you don't want to talk to me about my job?" He didn't say anything at all, but just kept on walking. I said, "If you don't want to talk to me about my job I will take it somewhere else, and you will have to talk to me about it." So I went down to Mr. Morton Marks' office, and talked to Mr. Morton Marks about it.

Q. What was that conversation? A. Mr. Morton Marks was in the office and I told him that I wanted 1485 —I hated to bring it to him, but I had gotten laid off on Friday. I said I guessed he knew about it, but he said he had not heard nothing about it. I said, "We got laid off Friday, and I wanted to ask Mr. Huffman why he laid me off, and he refused to talk to me about it." Mr. Morton Marks said, "What did you want to ask Mr. Huffman?" I said, "I wanted to ask him exactly why he laid me off." Mr. Morton Marks said, "Come go with me and I will get Mr. Huffman and talk to you about

it." We went up to the shipping room, and he sent
1486 for Mr. Huffman to come down and talk to both of us, and while the boy had gone after Mr. Huffman, Mr. Morton Marks told me, "After all, Mr. Huffman is your boss. When he comes down don't you say anything to him at all. Let me do the talking." I said, "All right; you do the talking and be sure to give my point as well as his."

Mr. Huffman came in, and Mr. Morton Marks said to Mr. Huffman, "Annie Mae tells me you have laid her off in preference to girls who have been there no longer than three months, and she has been there almost three years."

1487 Mr. Huffman says, "Yes—

Q. I don't think that is necessary. Did they give you any other reason why you were laid off besides slack work, in the course of that conversation? A. Yes. In the conversation I was telling you—I was talking to Mr. Morton Marks after he had sent Mr. Huffman back upstairs and he said he told Mr. Huffman to go upstairs and he would talk to me. I said, "Mr. Morton, there is no use trying to beat around the bush. You know why you laid me off—on account of the union." Mr. Morton said, "Since
1488 you said it, it is on account of the union." So he walked on back farther and told me to come back farther where all of them could not hear me. We walked back farther in the shipping room. He told me that one girl had told him that me and my husband had had a union meeting at our house, and I told him that I didn't know anything about it. The reason I told him I didn't know anything about it was because if they were wrong they would send for me to come back, I thought; and if I told them that I really did have a union meeting at our house

I would never get back, I thought, as he told me it was on account of the union. 1489

Q. Have you been back there at any other time except that? A. No.

Q. Had work been slack up to the time you were laid off? A. No, sir.

Q. Had work been coming through normally? A. Yes, sir.

Q. At the time you went back to the plant did you see the other girls working on your operation? A. At the time I went back everybody was working just like they always have been.

Q. Did you observe girls on your operation? Did you see them in the plant? A. Yes, sir. 1490

Q. How many of them were working? A. Five.

Q. Had anyone been put in your place? A. Yes. There was an extra girl, which made six.

Q. An extra girl? A. Yes.

Q. What was her ordinary employment? A. She worked across from me. I think she was sewing on buttons, if I am not mistaken.

Q. Do you know of your own knowledge whether or not she was a member of the union? A. No, sir, she was not a member of the union.

Q. You know that she was not a member? A. I know she was not a member of the union. 1491

Q. Do you know whether she had been in the plant a longer time than you had been? A. No, she had not. I had been there longer.

Mr. Van Arkel: I think that is all.

Mr. Green: The same motion.

Trial Examiner Perring: The same action.

Mr. Green: No cross examination.

(Witness excused.)

Mr. Van Arkel: Mrs. Annie Garnett.

ANNIE GARNETT, called as a witness for the
1492 National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Mr. Green: The same objection to this witness's testimony.

Q. (By Mr. Van Arkel) What is your name, please, Mrs. Garnett? A. Annie Garnett.

Q. And what is your address? A. 1929 Lake View Avenue.

1493 Q. When were you first employed at the Friedman-Harry Marks Clothing Company? A. September, 1931.

Q. What was your job there? A. Trimmer in the pants department.

Q. In September, 1935, how many were employed on that operation? A. Twelve.

Q. Twelve? A. Yes.

Q. What was your position among those twelve with respect to seniority? A. I was second oldest.

Q. You were second oldest? A. Yes, sir.

Q. Did you at some time become a member of
1494 the Amalgamated Clothing Workers of America? A. Yes, on August 25, or about that, 1935.

Q. Did you join at a union meeting? A. No, sir.

Q. Where did you join? A. I joined at home.

Q. At home? A. Yes, sir.

Q. Were you called on by anyone? A. By the workers,—union workers.

Q. Was any coercion used to get you to become a member of the union? A. Why, no. I am union.

Q. Had you been active in the union after you

became a member of the union? A. Well, I attended two meetings. I never went to see anybody 1495
about the union—about joining it.

Q. Had you made any calls? A. No, sir.

Q. At some time was your employment with the company terminated? A. Yes.

Q. When was that? A. On September 27, 1935.

Q. By whom were you laid off? A. Tyler Coleman came to me—

Q. Who is he? A. He gives out the work and takes it up.

Q. What did he say to you and what did you say to him? A. He said that Mr. Huffman said to go home and to stay until the next morning. 1496

Q. What did you say? A. I went home,—

Q. Did you return to the plant the next morning? A. They did not work the next day. No, I didn't go back.

Q. At some later time did you return to the plant? A. I returned to the plant the following Wednesday. In the meanwhile, Mr. Huffman said to come in Wednesday.

Q. Mr. Huffman said what? A. He said to come in Wednesday.

Q. Did you see him? A. I didn't see him. He sent me word. 1497

Q. Who told you to come back Wednesday? A. My daughter.

Q. Your daughter? A. Yes, sir.

Q. What did she tell you? A. She said to come in Wednesday and then—

Q. What did she say to you? A. She said that Mr. Huffman said to come in Wednesday.

Q. Did you go in Wednesday? A. No, I didn't go in that Wednesday because he sent me word

again not to come, when she went after the check.

1498 Q. Again? A. Yes.

Q. Did someone tell you not to come in? A. Yes.

Q. Who? A. My daughter.

Q. What did she say to you? A. Not to come in the following Wednesday. We were not working Monday and Tuesday, you see.

Q. At any time after that did you go to the plant? A. Yes.

Q. When was that? A. I went back the following Wednesday after he said not to come that Wednesday.

1499 Q. What date was that? A. I don't remember the date.

Q. Did you see any of the officers of the company, then? A. I saw Mr. Huffman.

Q. You saw Mr. Huffman? A. Yes, sir.

Q. And what is Mr. Huffman's job? A. He is my foreman.

Q. What was the conversation then? A. I asked him, must I go to work that morning, and he said, "No." He said he would see. He went in and stayed about a half an hour and then he come back and said, "No, nothing this morning."

1500 Q. What did you say? A. I said, "How about tomorrow?"

Q. What did he say? A. He said, "No; I will let you know when I need you."

Q. Have you heard anything from Mr. Huffman since then? A. I have been back about twice since then and both times I was told he would send for me when he needed me.

Q. Have you seen any of the officers of the company at any time since then? A. I saw Mr. November.

Q. When was that? A. It was about September 18th, I think. 1501

Q. September 18th? A. No. I am a little wrong. It was about November 18th.

Q. November 18th? A. Yes.

Q. Where did you see Mr. November? A. I went to his office.

Q. Were you called to his office? A. Yes, Miss Sheffield told me that Mr. November said to get all of us to come up to talk to him in a bunch.

Q. Who was that? A. Miss Sarah Sheffield.

Q. What is Miss Sheffield's position? A. She is one of them that was laid off. 1502

Q. Was she employed by the Friedman-Harry Marks Clothing Company? A. Yes.

Q. Did you go to the plant on that occasion? A. Yes.

Q. Who else was present? A. It was about 9 of them, nine or ten.

Q. And were those nine employees former employees of the Friedman-Harry Clothing Company? A. Yes.

Q. Were any of them employed by the company at that time? A. No.

Q. Would you tell us what happened and what was said? A. Mr. November took them as he come to them and asked them why they joined the union. 1503

Q. Did you hear that? A. Yes, and he asked me, and I told him that my husband and son was members of the union, and that I thought they were mighty good to belong to. He said that the unions that both of them belonged to was good unions and that—

Q. What unions did they belong to? A. My husband belongs to the Railroad Union, or did,

and my son belongs to the Typographical Union.

1504 Q. Did you tell him what unions they were? A. Yes.

Q. What did he say then? A. He said they were good unions, but this was not a union.

Q. Did he say anything more than that? A. That is about all.

Q. Is that the end of that conversation? A. Yes.

Q. Have you been back to the plant since then? A. No. He said he would let me know when to come back.

Q. Did you have a chance to observe the rest

1505 of the people on your operation? A. No, I did not, not at that time.

Q. Do you know of your own knowledge whether your place has been taken by anyone else? A. No, it has not been taken.

Q. Just answer that yes or no. A. No.

Q. Were any others on your operation laid off at the same time that you were laid off? A. No.

Q. So far as you know? A. They were not.

Mr. Van Arkel: I think that is all.

Mr. Green: The same motion.

1506 Trial Examiner Perring? The same action.

Mr. Green: No cross examination.

(Witness excused.)

Mr. Van Arkel: I will call Miss Garnett.

BEATRICE GARNETT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

1507

Q. (By Mr. Van Arkel) What is your name? A. Beatrice Garnett.

Q. And what is your address? A. 1929 Lake View Avenue.

Q. You are the daughter of Mrs. Garnett, who just testified, are you not? A. Yes.

Q. When did you first become an employee of the Friedman-Harry Marks Clothing Company? A. In May, 1935.

Q. What was your job when you started? A. I serged backs in the pants department.

1508

Q. How many were employed in that operation? A. There were five.

Q. What was your position among those five with respect to seniority? A. I was third.

Q. You were third? A. Yes.

Q. How long before you were hired had the two who were there longer than you been hired? A. One had been there two years when I was hired.

Q. Did they tell you how long before you were hired they had been hired? A. Yes.

Q. What did they say? A. One had been there two years and the other one had been there about three months.

1509

Q. At some time did you become a member of the Amalgamated Clothing Workers of America? A. I did.

Q. On what date did you become a member? A. It was around August the 26th.

Q. After you joined were you active in the work of the union? A. No.

Q. Did you attend any meetings? A. I attended two.

Q. Two meetings? A. Before I was laid off.

1510 Q. Do you know how many meetings were held between the time you joined and the time you were laid off? A. No.

Q. Did you make any calls? A. No.

Q. Was a petition in the form of Exhibit 2 in the former case, V-C-1, presented to you at any time by any employee? A. Yes.

Q. Do you identify this exhibit in case V-C-1 as a correct copy of the petition presented to you? A. Yes.

Q. When was that petition presented to you? A. August the 1st.

1511 Q. By whom? A. By Alice Gibson.

Q. Do you know what Alice Gibson's job in the plant is, of your own knowledge? A. No.

Q. What was said at the time she presented it to you? A. She just passed the petition along and asked us to sign it.

Examination by Trial Examiner Perring

Q. (By trial Examiner Perring) Did this young lady work in the plant? A. Alice Gibson?

1512 Q. Yes. A. Yes.

Q. In the plant or in the office? A. In the plant.

Q. You don't know what she did? A. No. She worked on a machine.

Q. She worked on a machine? A. Yes.

Q. Was she in a supervisory capacity at all over anybody? A. No; just one of the employees.

Q. (By Mr. Van Arkel) Do you know of your own knowledge how many of the girls on your operation were members of the union? A. No, I do not.

Q. Do you know whether there were any other members of the union, of your own knowledge? 1513
A. No.

Q. At some time was your employment with the company terminated? A. Yes.

Q. When was that? A. On September 27, 1935.

Q. By whom were you laid off? A. By Wilford Huffman.

Q. What is his job? A. He was my foreman.

Q. What did he say to you and what did you say to him? A. He came around Friday, the 27th, and told me to take a week off and I said, "All right."

Q. Was that all of that conversation? A. Yes. 1514

Q. Did you go back to the plant at any time afterward? A. I went back to the plant the following Friday to get my check.

Q. Did you see anyone at that time? A. I saw Mr. Huffman and I asked him when must I come back and he said he would send for me when he needed me.

Q. Have you returned to the plant since that time? A. I went back a couple of times after that.

Q. Did you see any of the officers or supervisors? A. I saw Mr. Huffman both times.

Q. Both times? A. Yes, sir. 1515

Q. What was the conversation on those occasions? A. Both times he just said he did not need me, and that he would send for me if he ever needed me.

Q. I don't know whether I asked you this or not. Did you sign the petition on August 1st when it was presented to you? A. Yes, I did.

Q. Did you on any of these occasions when you

went back to the plant have a chance to see the
1516 other girls on your operation? A. No, I did not.

Q. Do you know of your own knowledge whether anyone has been put in your place? A. A week before I was laid off Mr. Huffman put another girl on the same work that I was on.

Q. A week before you were laid off? A. Yes.

Q. What was her name? A. I don't know her name.

Q. Do you know of your own knowledge whether she was a union member? A. No.

Q. You don't know? A. No, I don't know.

Q. Have you at any time talked to any of the
1517 other officers in the plant? A. On November 18th, I think, we went back over to talk to Mr. November —Sarah Sheffield and Reba Holder talked to me, and I went back with them, and Mr. November wanted to talk to all of us, and I went back with them.

Q. What was said at that time? A. He just asked each individual what they thought of the union and why they joined it, and he said if we wanted to come back he would take us back but he would not— he said he would either take all of us back or lay off all in the factory that were
1518 in the union. He said he wasn't going to have any union in the factory.

Q. Did he say anything further about the union? A. No.

Q. Have you at any time been asked to come back to work? A. No, just that time.

Q. At that time did he ask you to come back to work? A. No. He said he would let us know; that he would send for us in a day or two.

Q. Have you heard anything further? A. No, sir. 1519

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Mr. Van Arkel: Your witness.

Mr. Green: The same motion.

Trial Examiner Perring: The same action.

Mr. Green: No cross examination.

(Witness excused.)

Mr. Van Arkel: Miss Madelyn Clarke.

MADELYN CLARKE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows: 1520

Direct Examination

Q. (By Mr. Van Arkel) What is your name? A. Madelyn Clarke.

Q. What is your address? A. 2010 West Carey Street.

Q. When did you start work for the Friedman-Harry Marks Clothing Company? A. February 16, 1932.

Q. What was your job? A. I run a buttonhole machine. 1521

Q. Was your job changed at any time when you worked in this plant? A. Before that I worked on a bar tacking machine.

Q. How long did you work on the bar tacking machine? A. About 6 months.

Q. You were then transferred to the buttonhole machine? A. Yes.

Q. Had any complaints been made at any time about your work? A. No.

Q. How many buttonhole machine operators were
1522 there? A. Two.

Q. Did you start work in the plant before or after the other buttonhole worker? A. After her.

Q. After her? A. Yes.

Q. At some time did you become a member of the Union, the Amalgamated Clothing Workers of America? A. Yes.

Q. When? A. On September 25th.

Q. Of what year? A. 1935.

Q. Where did you become a member? A. At my home.

Q. At your home? A. Yes.

1523 Q. Were you called on by someone? A. Yes.

Q. By whom? A. Farley Holder and Miss Cobb. I don't know whether there was anyone else or not.

Q. Did you voluntarily become a member of the union? A. Yes.

Q. After the N. R. A. was declared unconstitutional was there any change in your wages? A. Well, I had been on piece work, but I was put back to work on $14.40.

Q. On a minimum rate? A. Yes.

Q. When were you put back on that? A. I don't
1524 know exactly.

Q. Do you know what month? A. No, I do not.

Mr. Weinberg: All of that is certainly immaterial to the question here.

Mr. Van Arkel: Do you think it is? I am going to try to show the reason.

Trial Examiner Perring: We will see what he is trying to get at. Go ahead.

Q. (By Mr. Van Arkel) Had you been active in the affairs of the union? A. No.

Q. Had you attended any meetings? A. No.

Q. Did you make any calls? A. No. 1525

Q. At some time was your employment with the company terminated? A. Yes, sir.

Q. When was that? A. September 27, 1935.

Q. Will you tell us what happened on September 27? A. Maurice Huffman—that is Mr. Wilfred Huffman's brother,—came to my machine and told me that Wilfred said to stay out the following week.

Q. Did you stay out the following week? A. Yes.

Q. You returned to the plant some time? A. Yes. I went back I think on October 4th after my check and Mr. Morton Marks was sitting out front 1526
in an automobile and he told me to get in, and he asked me what I joined the union for.

Q. And did you get in? A. Yes. I told him I had not joined. He said, "If you haven't I am glad you haven't joined." I asked him what I was laid off for, and he told me that it was not anything about the union; that I was not laid off on account of the union, because he just found it out that morning himself, and he had not said anything to Mr. Huffman about it. I got out of the automobile, then, 1527
and went upstairs.

Q. Was that all of that conversation? A. Yes. He told me to tell Mr. Huffman to come down there, and after awhile he come back upstairs.

Q. Who did? A. Morton Marks. He told me that he had talked with Mr. Huffman and that Mr. Huffman said that he would put me back to work as soon as he could.

Q. Have you been back to the plant at any other time since? A. Yes; about three times.

Q. Whom did you see on those occasions? A.
1528 Mr. Huffman.

Q. What was the conversation you had with him? A. All that he said was that he would send for me when he needed me.

Q. Were you present at this meeting of November 18th that the other witnesses testified to? A. Yes, sir.

Q. Will you tell us what was said at that time, and who was present? A. There was about nine or ten of us there.

Q. Was any representative of the company there?
A. Mr. November.
1529

Q. What was said by Mr. November and what was said by you? A. He asked me how I felt about the union and I laughed and said, "I don't know." He said, "You ought to." He didn't ask me any more about it.

Q. Was anyone else laid off on the same day that you were laid off? A. I don't know.

Q. Do you know whether the other buttonhole operator was laid off the day that you were? A. No, she was not.

Q. Have you seen her at any time since then at
1530 the plant? A. Yes.

Q. Was she working? A. Yes, sir.

Q. Was anyone else working at your machine? A. Yes, Gladys Crowder was working on my machine.

Q. Who is she? A. She is Preston Crowder's wife.

Q. Who is Preston Crowder? A. He is the boss,

Q. Do you know of your own knowledge whether

Mrs. Crowder is a member of the union? A. No, I do not.

1532

Q. Have you been asked to come back to work at any time? A. No, sir.

Mr. Van Arkel: I think that is all.

Trial Examiner Perring: In view of the temporary absence of Mr. Green from the room we will assume the same motion is made as to this testimony, and the same action will be taken. If he is not here for cross examination of the other witnesses we will presume the same motion will be made as to them.

1531

(Witness excused.)

Mr. Van Arkel: I will call Miss Johnson.

SYLVIA JOHNSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

1533

Q. (By Mr. Van Arkel) What is your name, please? A. Sylvia Johnson.

Q. What is your address? A. 312 West Grace Street.

Q. When were you first employed by the Friedman-Harry Marks Clothing Company? A. January 2, 1935.

Q. 1935? A. Yes.

Q. What was your job? A. Stitching side pockets.

1534 Q. Did that remain your job as long as you were with the company? A. It did.

Q. How many were employed on that operation? A. Seven.

Q. In point of seniority where did you stand? A. Fourth.

Q. Did you have any conversation with any or overhear any conversation by any of the officers of the company about the Amalgamated Clothing Workers? A. I did.

Q. When was that? A. I can't say the date of it. It was not so very long after the union came

1535 into Richmond.

Q. Do you know of your own knowledge when the union came into Richmond? A. No. I know it was while—it was after it came to Richmond, because we were discussing a meeting that day.

Q. Which meeting? When was that meeting you were discussing held? Do you know when it was held? A. The first one was held in the church, but I can't say the date of it.

Q. Do you know about when this conversation took place? I mean roughly—within a week or so. A. No, I would not say.

1536 Q. Was it early in the summer or late in the summer? Just give it approximately. A. No, I could not say.

Q. Well, what was the conversation you overheard? Who was speaking? A. Katherine Hutchinson and Edith Margets. They were discussing the meeting being held in the church.

Q. Who were those two girls whose names you mentioned? What do they do? A. They close side pockets.

Q. They were near you? A. One worked on each side of me during the time Mr. Marks came down. 1537

Q. Which Mr. Marks? A. It was the oldest one. I could not tell you which one. He came down and they were discussing some of the people at the plant that had attended this meeting, and they were laid off, and Mr. Marks said, yes, he would lay all of them off that attended the meetings because he said that if they did not have any more confidence in them than that he would not work them.

Q. Was that all of the conversation that you overheard? A. It was.

Q. At some time did you become a member of the union? A. I did. 1538

Q. When did you become a member of the union? A. August 24, 1935.

Q. Were you active in the affairs of the union? A. I was.

Q. Did you go to the meetings? A. I did.

Q. How many meetings did you go to? A. Seven.

Q. Seven? A. Yes.

Q. Is that seven between the time you joined the union and the time you were laid off? A. Yes.

Q. Did you make any calls? A. I did not. 1539

Q. Did you try to persuade other employees to join the union? A. No. I talked to them about it, but I did not try to persuade anyone.

Q. At some time was a petition in the form of Exhibit No. 2 in the case, Docket V-C-1, presented to you in this form (indicating)? A. It was.

Q. When was that presented to you? A. It was around the first of August. I would not say the date.

Q. Around the first of August? A. Yes.

1540 Q. By whom? A. By Alice Gibson.

Q. Do you know what Alice Gibson's job in the plant is? A. I do not.

Q. Will you tell us what happened at the time she offered the petition to you? A. She handed it to me to read it, and asked me to sign it, and after reading it I told her, "I don't know about signing it." She handed it to the lady sitting next to me, and went up and was talking to Mr. Huffman, and she came back and said to me, "Mr. Huffman said to sign the paper or else." I took

1541 the paper back after this lady finished reading it and signed it.

Q. At any later time did you hear any conversation in the presence of any of the officers of the respondent company about the union? A. I heard Mr. Marks tell Katherine Hutchinson—

Q. Which Mr. Marks? A. It was the largest one, but I don't know his name.

Q. What was said? A. He said that if the union took place in the factory, that they would move away, and Katherine Hutchinson asked if she might go with them when they moved away, and he said,

1542 yes, that all of them could go that did not belong to the union.

Q. Is the Mr. Marks, the gentleman in the court room, the one that made that remark? A. The one who made the first one is, but not the last remark.

Q. This is Mr. Morton Marks, I believe? A. Yes.

Q. About when did this conversation that you just testified to take place? A. About the middle of August but I could not say because I don't remember.

Q. On any other occasion did you hear any other conversation about the union from or in the pres- 1543
ence of any of the company officials? A. No, sir.

Q. In the beginning of September did you have any conversation with Miss Katherine Hutchinson? A. At the beginning of September?

Q. Yes. A. Not directly with Miss Hutchinson.

Q. Was there some conversation in which Miss Hutchinson was involved? A. There was.

Q. Who is Miss Hutchinson? I believe you have already testified to that. A. She closes side pockets.

Q. What was that conversation? Will you re- 1544
peat that, and tell us who was present? A. She was called to the office at lunch time.

Q. By whom? A. There was a boy that came up there and said that Mr. Marks said for her to come to the office, and she came back up there after that, but during lunch time Doris Koch and myself walked out and walked down the street, and when we came back we met Katherine Hutchinson in the hallway as we went up the steps. I walked around to Katherine—

Q. Did you have some conversation with Miss Hutchinson earlier in the day or did you over- 1545
hear some conversation? A. After she went back to her machine she made the remark while we were working that she got $22.50 a week whether or not she worked. One of the girls asked her why—I don't know which one—and she said, "Reporting." One of the—

Q. Did she say anything more than that? A. Not right then. One of the girls says, "Reporting what?" She said then that she had a right to talk; that

she had been afraid to talk, but that she had a
1546 right to talk then, that she had someone to back her—it was reporting the ones that belonged to the union. She said she had a right to go to the union meetings and could report every face that she saw there.

Q. Immediately after that she was called to the office, or was she called to the office before she made that remark? A. It was after she came from the office that she made that remark, that afternoon while she was working.

Q. What happened after that? A. Then she made
1547 the remark. She said that she had been told to say anything to us that she wanted to, and then she looked across at me and said that she had been told that she could say anything to us that she wanted to, and that if we said anything back to her, for her to slap us.

Q. Did anything further happen that day?

Q. No, not that I recall.

Q. At some time was your employment with the company terminated? A. What was that?

Q. At some time did you stop work with the Company? A. I did.

1548 Q. When was that? A. It was August 21st.

Q. By whom were you laid off, or were you laid off? A. I just don't know. There was not any name signed to the note.

Q. You say a note was left for you? A. It was.

Q. Where did you find the note? A. Pinned on my check.

Q. Did you talk to anyone about that note? A. I did. On the 16th day of October I received a telegram that my uncle was dead, and for me to

come home. It was six o'clock in the afternoon. And I didn't know whereabouts to get in touch 1549
with Mr. Huffman. I called Mr. November and I asked him where I could get in touch with Mr. Huffman, and when he learned what was the matter he told me to go ahead home, and he would tell Mr. Huffman, and I did so.

Not knowing whether or not they were working there the following Monday I went in and I saw Mr. Huffman and I asked if Mr. November had told him about my being out, and he says, "No, I don't know why you were out. No one has told me anything."

I went down stairs and got my check, and on the 1550
check there was a note pinned saying, "Mr. Huffman will send for her when he needs her."

I went to see Mr. Huffman and he contended that he did not know why I was out. I told him I would go see Mr. November about it. He says, "No, I will go and see Mr. November." I insisted that I go see Mr. November myself, then, and he said, no, that Mr. November was not there. He said, "The time that you already have"—which I should have turned in Friday but I wasn't there—he says, "I will have him pay you for it now." I says, "No, 1551
I would rather wait until Friday." I went down in the office and asked down there about Mr. November and they said, no, he was not in. I went back the following Wednesday.

Q. Do you know what date that was? A. No. It was—Monday would be the 21st, when I went in. It was the following Wednesday.

Q. The 23rd? A. It surely would have to be. I went to see Mr. November. I asked him if he re-

1552 called that night a week ago, which was a week from the time I called him at his home; that I called him, and I said, "I didn't ask your permission to go home, but you told me that I might go, and that you would tell Mr. Huffman for me why I had gone home." And he said that he remembered it, and I says, "I came in Monday to see Mr. Huffman, and Mr. Huffman said that you hadn't told him anything about it, and he did not know why I was laid off.

I said, "I got my check and this note was pinned on the check." I saved the note and carried it back and showed it to him. He says, "Well, this is not 1553 the reason you were laid off." I said, "Well, I realize that the work has been slack, but we have been sharing all of the work alike, all of us. Today everyone else goes back to work on my operation except me and I don't go back, and I would like to go back."

Q. Did you know that all the others on your operation were going back? A. No, I didn't see them, but I knew that everyone was supposed to go back.

Q. Had you heard from them, that they were go-1554 ing back? A. Yes, he told them all to come back in. Mr. Huffman said that he told them all to come back in Wednesday. That was on Monday when I saw him.

Q. Mr. Huffman told you that they were all coming in Wednesday? A. Yes. He said that was not why I was laid off after I told him that I realized the work was slack, but that we had all been sharing the work alike, and he says, "Can you read"? I told him that I could. He asked me if I read the note on that check and I said I did. He said,

"That is all that I have to say." I says, "Mr. November, have you yet told Mr. Huffman about my 1555
going home?" He said, "No." I says, "I feel like you should go downstairs and tell him while I am here," and he did. He went with me. He took the note in his hand, and he told Mr. Huffman why I went home. He says, "This is not the reason why we laid her off."

Q. Who said that? A. Mr. November told Mr. Huffman that my going home was not why I was laid off; that I did perfectly right to go home, and that he told me to go.

Q. Have you been back to the plant since that time? A. During that conversation Mr. November 1556
said that the following Wednesday he was in New York, and he said that it was before that. He says, "Are you just coming in to see about work?" I says, "No, because I worked last Wednesday," and I turned to Mr. Huffman and said, "Didn't I work last Wednesday?" He says, "Yes, you worked last Wednesday." Mr. November says, "I reckon you are right."

Then I left and went downstairs and started outdoors, and I met Mr. Marks, and he said, "Did you get everything straight?" And I told him, yes, and he says, "There is not any use of you all keeping on coming back up here. We usually send for our employees when we need them." 1557

Q. Was anything more said then? A. No.

Q. Have you been back to the plant since then? A. I have.

Q. When did you go back? A. About two weeks ago.

Q. Was that the meeting of November 18th? A. It was.

Q. Have you at any time since your layoff seen
1558 the other girls on your operation at the plant? A. No, not to speak to.

Q. Have you seen them at all? A. I have seen them but not to speak to them.

Q. You have seen them? A. Yes.

Q. Were they all working? A. I have seen them since I quit working but not to speak to them, so I don't know.

Q. Have you seen them at the plant? A. No, not at the plant.

Q. Then you don't know of your own knowledge whether or not anyone has taken your place? A.
1559 I do not.

Q. I think you might give us the conversation that took place at the meeting of November 18th. A. Sarah Sheffield told me that she was up there to see Mr. November and that Mr. November told her to get a bunch of girls who had been laid off and to bring them up there, that he wanted to talk to them, and to bring them up at 4.30 o'clock in the afternoon. If I recall, it was Monday afternoon that he told her to bring them up. We went up there. Mr. November went with us upstairs on
1560 the fourth floor and he told us that he had been talking to one of the fellows downstairs and which had joined the union, and he said that he asked this fellow why he joined the union? He says, "Haven't we been working the right number of hours which have been worked at the time of the N. R. A.?" He says, "Haven't we been paying the right kind of wages?" And this fellow says, "Yes." Then he said, "Why did you join the union." And then this fellow didn't answer him because he said there was no answer for him. He told him that he had been

looking blue and sad for several days, and he asked him why. 1561

Q. Did he say who that was? A. No. I didn't hear him if he did. He said it was one that had joined the union. He said it was because so many of his friends that had had work there had been laid off. Mr. November told him that he was going to have them come up and he was going to talk to them all over again about it. So Sarah Sheffield happened to be there, and he told her to bring this bunch of girls in for him to talk to, and he asked each one separately how they felt about the union.

Q. Did he ask you? A. He did.

Q. What did you tell him? A. I says, "Probably you want to know why I joined." I says, "This is the reason I joined—in the factory there was girls in here, especially Katherine Hutchinson—she talked to us very undeserving, me most especially, and I went to my boss about it, and it didn't do any good, and I felt that if we had a union in the factory it would be a much better place to work." 1562

Q. To whom did you tell that? A. I told it to Mr. November.

Q. Do you know of your own knowledge whether all the people there except Mr. November were members of the union or not? A. They were. All that was at this meeting that we had? 1563

Q. Yes. A. They were.

Q. Do you know of your own knowledge how many of the girls who were on your operation were union members? A. I was the only member on my operation.

Mr. Van Arkel: Your witness, Mr. Green.

Mr. Green: The same motion.

Trial Examiner Perring: The same action.

1564

Mr. Green: No cross examination.

(Witness excused.)

Mr. Van Arkel: I will call Miss Doris Koch.

DORIS KOCH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

1565 . (By Mr. Van Arkel) Please give your name. A. Doris Koch.

Q. And your address? A. 1809 Auburn Avenue.

Q. When did you start with Friedman-Harry Marks Clothing Company? A. February 8, 1934.

Q. What was your job? A. I raised pants pockets.

Q. How many worked raising pockets? A. One other girl and me.

Q. Did you raise pockets all the time that you were employed at the plant? A. All but just about one day, when I made backs.

1566 Q. Were there two of you employed on that operation all the time that you worked there? A. No, sir. At times there was one girl that helped us out when we were rushed.

Q. At some time did you become a member of the Amalgamated Clothing Workers of America? A. Yes.

Q. When did you become a member? A. July 30.

Q. Of what year? A. This year.

Q. Where did you become a member? A. At my home.

Q. Was a petition in the form of Exhibit No. 2 in the other case, V-C-1, presented to you at any 1567
time at the plant? A. I was out sick at that time.

Q. That is, the answer is, no? A. No.

Q. No petition was presented to you? A. No.

Q. You never signed a petition in the form of Exhibit No. 2? A. No.

Q. Had you been active in the union after you joined? A. Yes.

Q. You made calls? A. Yes.

Q. How many meetings did you attend? A. Every one.

Q. From the beginning? A. From the time I joined. 1568

Q. Up to the present? A. Up until the present.

Q. Did I ask you about your petition or your operation? A. Yes.

Q. Were you the oldest? A. No. This other girl worked just a year longer than I did.

Q. The other girl had been there longer than you had? A. Yes.

Q. Do you know whether or not she was a union member? A. She was not.

Q. Was the girl who helped you out a union member? A. She was not.

Q. Was the girl who helped out on your job 1569
there more recently hired than you? A. Yes, sir.

Q. At some time was your position with the company terminated? A. What do you mean?

Q. Did you give up your job some time? A. Yes.

Q. Did your job cease some time? A. Yes.

Q. When was that? A. November 8th.

Q. Of this year? A. Yes, sir.

Q. By whom were you discharged? A. Mr. Wilford Huffman.

Q. What is his position? A. He is foreman of the
1570 pants department.

Q. Would you tell us what conversation took place? A. He came to me and told me to turn my tickets in, about three o'clock. I took the tickets up and asked him who would I give them to and he said he would take them. Then I asked him must I come back Friday for my check and he said, "No, you will get it right now. Wait a while." So I waited around awhile, and then got my coat, and then I came back and said, "Mr. Huffman, what is it all about?" And he said, "What is it all about?" I said, "Yes." He said, "Well, you are just not
1571 satisfied with the job." Then I went on down and got my time and went home.

Q. Had you been satisfied with your job? A. Yes, sir.

Q. Had there been any complaints of your work? A. No, sir.

Q. Was anyone else laid off on the day you were laid off? A. No, sir.

Q. Have you been back to the plant since that time? A. Yes, sir.

Q. When did you first go back? A. About two
1572 or three weeks ago.

Q. Was that November 18th? A. I think so.

Q. What happened at that meeting—what the others have testified to? A. Yes, sir.

Q. At any time that you have returned to the plant have you seen anyone working on your job? A. Sure. There was a person on it the next day. I was laid off on Friday.

Q. Do you know of your own knowledge that somebody was put on your job? A. Yes.

Q. Did you see somebody else working on your job? A. I didn't see them but someone told me.

Q. We will have to cut that out. You haven't seen anyone working on your job? A. No. 1573

Q. Did you have any other conversations about your discharge after your discharge? Was any official of the firm talked to? A. Yes. About ten of us went up there about two or three weeks ago and—

Q. Yes, I think you told us about that. Have you talked about it with any other officials in the firm? A. Not since I have been discharged. Before I was discharged I did.

Q. You were mentioned in the complaint which was issued by this Board in the former case, were you not? A. Yes. 1574

Q. Is your husband the one who is mentioned as a person who had been laid off by this company, in the earlier case? A. Yes.

Mr. Van Arkel: I think that is all.

Mr. Green: The same motion.

Trial Examiner Perring: The same action.

Mr. Green: No cross examination.

(Witness excused.)

Mr. Van Arkel: I think that concludes the case.

Mr. Weinberg: We have no testimony to offer, Mr. Examiner, and we submit the case without argument. 1575

Mr. Wirin: That is perfectly satisfactory.

Trial Examiner Perring: There is no desire for a continuance for any cause by counsel for either side?

Mr. Weinberg: No, sir, but we do ask—and we do not ask it for purposes of publicity or anything else—seriously for as early a

determination by yourself of the questions
1576 involved here as you can reasonably give us, because I believe that both sides are anxious to have this matter terminated, regardless of the conclusion, at the earliest possible moment.

Trial Examiner Perring: I assure counsel that that will be done as quickly as possible.

If there is nothing further to come before us this hearing is now concluded.

(Whereupon, at 5.15 o'clock p. m., December 5, 1935, the hearing of the above-entitled
1577 matter was closed.)

Board's Exhibit 1

This exhibit consists of the charge, complaint and notice of hearing, returns of service, designation of examiner, extension of time for filing answer,, special appearance of respondent, motion to dismiss the complaint and answer, postponment of hearing and order designating trial examiner.
1578 All of the foregoing appears printed herein at pages 424 to 440.

Board's Exhibits 2 and 3

These exhibits were read into the record in Case No. C-40 and are omitted pursuant to order.

Decision

UNITED STATES OF AMERICA 1579

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC. *and* AMALGAMATED CLOTHING WORKERS OF AMERICA	Case No. V-C-4

1580

STATEMENT OF THE CASE

On November 11, 1935 the Amalgamated Clothing Workers of America filed with the Regional Director for the Fifth Region a charge that the Friedman-Harry Marks Clothing Company, Inc., Richmond, Virginia, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On November 15, 1935 the Board issued a complaint against the Friedman-Harry Marks Clothing Company, Inc., hereinafter referred to as the respondent, said complaint being signed by the Regional Director for the Fifth Region, and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section

1581

1582 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices, the complaint alleged in substance that the respondent, by its officers and agents, terminated the employment of certain named employees, all of said acts occurring on various days on and after September 27, 1935, for the reason that each of said employees had joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, said acts being contrary to Section 8, subdivisions (1) and (3) of the Act.

1583 The complaint and accompanying notice of hearing were served on the parties in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. The respondent, appearing specially, objected to the jurisdiction of the Board on stated constitutional grounds. Without waiving its rights under that special appearance, the respondent filed an answer to the complaint in which it admitted the discharges but denied the allegations of violations and moved to dismiss the complaint. On December 5, 1935 a hearing was held at Richmond, Virginia by Henry G. Perring, the Trial Examiner designated by

1584 the Board, and evidence was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties. Counsel for the Board introduced all of the evidence presented by the Board, consisting entirely of written stipulations and affidavits, in the prior case involving this concern (Case No. C-40). The respondent did not object to the introduction of such affidavits on the ground that it was deprived of the

opportunity to cross-examine the affiants but solely on the ground of their irrelevancy and incompetency. The respondent did not present any evidence, oral or written, on its behalf nor did it cross-examine any of the witnesses who testified orally for the Board. The Trial Examiner denied the motion to dismiss the complaint. The Board affirms this ruling. 1585

Thereafter the Trial Examiner duly filed his Intermediate Report with the Regional Director. In said Report the Trial Examiner ruled that the evidence submitted by the Board was admissible and consequently overruled the various objections of the respondent. The Board affirms these rulings. 1586 He found that the respondent by discharging Annie Mae Rogers, Maggie High, Robert L. Morgan, Isaac Kenny, J. Wesley Owen, Albert J. Rogers, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Doris Koch, and Sylvia Johnson, said discharges being made for the reason that each employee had joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, hereinafter referred to as the union, has engaged in and in engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act. No evidence having been introduced with respect to the cases of Edna Hicks, Reba Holder,* and Mrs. Lillian Tunstall, the Trial Examiner dismissed the allegations in the complaint concerning these employees. The Trial 1587

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* This employee is involved in the first case concerning this respondent (Case No. C-40).

Examiner recommended that the respondent cease
1588 and desist from its unfair labor practices and, in addition, offer reinstatement to the discharged employees and pay to said employees respectively a sum of money equal to the wages lost to them by virtue of the discharges. The respondent has not complied with these recommendations.

On March 28, 1936 we made our findings of fact and decision in the first case involving this respondent. See In the Matter of Friedman-Harry Marks Clothing Company, Inc., Case No. C-40. Since all of the evidence in that case has been
1589 introduced into this case, most of the findings of fact there made are here applicable. We therefore incorporate in this decision, similarly numbered, Findings 1 through 32 and Findings 36 and 37 of the prior case.

Upon the entire record in the case, including the pleadings, the stenographic transcript of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

1590 *FINDINGS OF FACT*

I. THE MEN'S CLOTHING INDUSTRY

1. The men's clothing industry is among the twenty most important manufacturing industries in this country. It ranked in 1929, according to the U. S. Census of Manufactures, sixteenth in the number of wage earners employed, nineteenth in the value of its product and sixteenth in the

amount of wages paid. In 1935* there were more than 3,000 firms in the industry which employed approximately 150,000 workers in the manufacture of men's clothing. In addition to these workers, there are about 58,000 engaged in the manufacture of the fabrics from which the clothing is made and about 100,000 who are engaged in the wholesale and retail distribution of the manufactured men's clothing. The total value of sales in 1929 by the manufacturing plants in the industry was $833,242,000. 1591

2. The various steps in the typical process of manufacturing men's clothing are as follows: 1592

(a) The purchase, generally by specifications, of the raw materials—mainly woolen and worsted cloth, cotton and rayon, canvas, silesia, felt, haircloth, sewing materials and buttons;

(b) The sponging and shrinking of the cloth, after an examination to determine the proper method of so treating it;

(c) The cutting of the cloth, linings, canvas and other materials according to schedules prepared on the basis of sizes, models and customer; 1593

(d) The fabrication into separate garments, such as coats, pants and vests, of the cut materials

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* Unless the text indicates the contrary, the statistical statements in the findings of fact are based upon 1935 figures.

through many sewing, basting and pressing operations;
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(e) The assembly of these separate garments into completed suits, grouped according to customers' orders and, in some cases, having sewn on them the customer's label;

(f) The distribution of the garments to the manufacturers' customers, generally retailers; alteration of the garment by the retailer to fit it to the wearer and correction by the manufacturer of defects in returned garments.
1595

3. Woolen and worsted cloth represent about 75 per cent of the total cost of raw materials. Much of the raw wool is imported from foreign countries. The production of the domestic raw wool is concentrated in the Western States, over 70 per cent having been produced in that area in 1933. Texas, Montana, Wyoming, and California constitute the chief wool-producing States. But while the raw wool is thus produced mainly in the West, the manufacture of that wool into woolen and worsted cloth, known as men's wear fabrics, takes place
1596 largely in the New England States, so that there is a constant flow of raw wool across the country to the mills in New England. These mills in 1929 produced over 63 per cent of the total of men's wear fabrics. Such fabrics constitute the largest single item as respects both quantity and value of the product of the wool textile industry.

4. The bulk of the rayon fabrics used for linings is produced in New Jersey and Pennsylvania, whose

combined production in 1929 exceeded 50 per cent of the United States total. In all, only fourteen 1597
States produce rayon fabrics. As these fourteen States are not similarly prominent in the list of States producing men's clothing, it is clear that there must be an extensive flow of this raw material in interstate commerce. For example, sixteen States and the District of Columbia, which accounted in 1934 for over 25 per cent of the garments cut, produced no rayon fabrics in 1929, while New York, which cut more than 46 per cent of the total of men's clothing cut in 1934, produced only 3.7 per cent of the total of rayon fabrics. 1598

5. As in the case of the wool and rayon fabrics, the areas of production of the other materials, such as cotton fabrics, silesia for pockets, felt, haircloth, jute and hemp fabrics, bear no direct relation to the areas of production of men's clothing, so that a large amount of these materials must be transported to the latter areas.

6. Most of the sponging and shrinking, which is necessary to condition the fabrics for cutting, is performed in New York and Philadelphia for 1599
those firms which do not operate their own sponging plants. The cloth is generally shipped, after its purchase by the men's clothing manufacturer, from the mill to the sponging plant and then reshipped to the manufacturer.

7. The principal operations after shrinking and sponging are cutting, sewing and pressing. All of these operations may be performed in one plant,

1600 but very frequently they are performed separately in plants located in different States. The term "inside manufacturer" is applied to establishments in which the entire manufacturing process is carried out in one place. The "contract manufacturer", on the other hand, purchases the cloth and, after sponging, cuts it in his plant but has the sewing and pressing performed by contractors to whom the cloth is let out on a piece rate basis. For the New York area, about 75 per cent of the goods cut are sent out to contract shops to be sewn.

1601 50 per cent of the 3,225 establishments engaged in the fabrication of men's clothing are located in New York State; 95 per cent are located in eight States—New York (50.2 per cent); Pennsylvania (10.4 per cent); Maryland (10.2 per cent); New Jersey (5.9 per cent); Illinois (8.3 per cent); Massachusetts (3.6 per cent); California (3.3 per cent); and Ohio (3 per cent). Since the men's wear fabrics are produced largely in the New England States, the goods must be transported from the mills across state lines to the fabricating establishments in the States listed above. 65 per cent

1602 of the total of suitings and pantings fabrics for mens' wear produced in 1929—$175,379,000 in value—was produced in five New England States, Massachusetts, Rhode Island, Connecticut, Maine and Vermont. In these same five States, 74 per cent of the overcoatings fabrics, or $23,371,000 in value, was produced. While the combined total of men's wear fabrics produced in these States was thus about $200,000,000, the value of men's clothing manufactured from these fabrics in the same States

was only $35,000,000. It is thus apparent that the great bulk of the fabrics are shipped to manufacturing establishments in other States. 1603

In respect to the cutting of the cloth, about 46 per cent is performed in New York; 11.72 per cent in Pennsylvania; 11.17 per cent in Ohio; 9.12 per cent in Illinois; 7.20 per cent in Maryland; 4.07 per cent in Massachusetts; and the balance in other States (based upon 1934 figures). In 22 States, no cutting is performed. But while the three States of New York, Ohio and Massachusetts in 1934 cut 61.57 per cent of the total number of garments cut, only 44.81 per cent of the man-hours worked in the men's clothing industry were worked in these States. Conversely, although only 28.74 per cent of the garments were cut in Maryland, Illinois, New Jersey and Pennsylvania, 41.98 per cent of the man-hours were worked in these States. These comparisons indicate the extent to which the cloth and garments are transported among the States in the process of manufacture. 1604

8. The processes in many of the clothing factories are assembly operations. Many firms, for example, do not make shoulder pads for coats in their own factories but buy them from firms specializing in this part of the garment, in many cases causing the pads to be transported from other States. The same is true of the canvasses used in the coats. Finally, certain parts of the suit, as the pants or coat and vest, may be manufactured in one State and the other parts elsewhere, so that the separate garments must be transported from the various manufacturing plants to a cen- 1605

tral place for assembly into suits before delivery
1606 to the retailer or other purchaser.

9. Thousands of clothing workers are employed in the retail stores in the task of making the alterations on the suits necessary to fit them to the particular customer. The manufacturing operations do not really end until after the suit is fitted to the customer and all alterations completed.

10. It is obvious that the market for men's clothing is a national one. Since most of the clothing is produced in a few States—over 90 per cent in
1607 seven States—but is used in every State, the sale and distribution of the clothing involves transportation and commerce among the States. In 1929 in the seven States which produced 90 per cent of the total—New York (46.33 per cent); Pennsylvania (11.72 per cent); Ohio (11.17 per cent); Illinois (9.12 per cent); Maryland (7.20 per cent); Massachusetts (4.07 per cent); New Jersey (.70 per cent), only 48 per cent of the total sales were made—New York (16.7 per cent); Pennsylvania (8.1 per cent); Ohio (5.9 per cent); Illinois (8.7
1608 per cent); Maryland (1.3 per cent); Massachusetts (4.1 per cent); New Jersey (3.2 per cent). In 21 States no men's clothing was produced at all, but these same States accounted for 12 per cent of the total clothing sold.

11. The manufactured clothing is marketed in a variety of ways. The bulk of the clothing is sold by manufacturers to retailers located in every State. Sales to retailers in 1929 amounted to 63

per cent of the total measured by value. These retailers consist of men's and boys' clothing stores, 1609
furnishings stores, family clothing stores, department stores, general stores and dry goods stores. More than half of the total retail sales were made by the men's and boys' clothing and furnishing stores. Recently, the chain store method of distribution has become important and in 1929 there were 286 men's wear chains operating 3,054 stores. Nine of the 85 of these chains which sold only men's clothing were national in scope and sold 25 per cent of the men's and boys' clothing sold in the type of store described as "men's clothing 1610
stores." In addition, some manufacturers now own and operate retail outlets located in many States. In 1929 distribution through the manufacturers' own retail outlets amounted to 8.3 per cent of the total sold. This method of distribution is increasing. Only 14 per cent of the product was disposed of to independent wholesalers and 6 per cent to wholesale branches owned by the manufacturers.

12. About 5.9 per cent of the men's clothing produced in 1929 was sold direct to household consumers by means of house-to-house canvassing. 1611
About 299 plants distributed their product in this manner. The canvasser has samples of material from which the customer makes his selection. His measurements are taken, the garment is manufactured pursuant to the order and shipped direct to the customer.

13. Sales to retailers are made through two main methods—sending salesmen out to travel from

1612 State to State and maintaining show rooms in New York City and other cities, which are visited by buyers from stores throughout the country. The New York market is the largest in the country for the sale of men's clothing. The Daily News Record, a trade journal, and the New York Times list daily the arrival of buyers of men's clothing. These buyers visit the show rooms of the manufacturers and make their selections from samples on hand. Many buyers maintain headquarters in New York and are visited there by salesmen for the manufacturers. The two directories of the men's wear
1613 industry, The American Clothier and Fairchild's Men's Wear, list sales offices and buying offices. Show rooms are maintained in other cities, including Chicago and Los Angeles.

The salesmen on the road establish in some large cities temporary show rooms where their samples may be inspected by the buyers of the stores in that area. Their main trips are at specified times during the year in advance of the Fall and Spring retail selling seasons.

14. National advertising of their product is util-
1614 ized by many of the manufacturers. In addition to advertising in the trade journals, such as the Daily News Record, The American Clothier and Fairchild's Men's Wear, they advertise in magazines of national circulation. Moreover, by means of trade marks and trade names they are able to advertise nationally by using prominent newspapers in the various cities. Such advertising greatly assists the salesmen by creating a familiarity with the product and a demand for it. Eleven

firms spent more than a half million dollars in magazine advertising in 1929. 1615

15. The men's clothing industry is thus an industry which is nearly entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation. There is a constant flow of raw wool from the Western States and foreign countries to the mills of New England where it is transformed into men's wear fabrics, thence to the sponging and shrinking plants of New York and Philadelphia, then, joined by the other necessary raw materials, to the fabricating factories of the Middle Atlantic States for 1616 manufacture into clothing. This last operation involves a large amount of movement of the cloth and manufactured garments from State to State until final assembly of the finished product. Finally, in the main by way of retail stores, the garments are distributed to customers located in every State. No clothing manufacturing concern could exist without this dependence upon interstate commerce. The industry itself has no doubt as to its status, for the Executive Director of the New York Clothing Manufacturers Exchange, Inc., which represents 1617 about 250 manufacturers doing 70 per cent of the total business in the New York market, stated in his affidavit that the industry is conducted as an interstate business and is entirely dependent upon interstate commerce.

16. As can be gathered from the above, the manufacturing plants are concentrated in certain areas. In recent years there has been a tendency,

however, for clothing manufacturers to migrate to
1618 other areas. Migration is aided considerably by the mobile character of the industry. The amount invested in fixed capital is relatively small compared with other industries. Heavy machinery or special buildings are not required and dismantling of machinery and installation elsewhere does not involve large expenditures. A large proportion of the capital is invested in garments rather than in buildings and machinery. Moreover, transportation costs are low in proportion to the value of the product. For this reason the industry is carried on without regard to the sources of raw ma-
1619 terials or the areas of consumption and involves an extensive use of transportation facilities even during the process of manufacture.

The chief incentive to this migration is the search for lower labor costs. The industry is highly competitive—no single concern does more than 3 per cent of the total business. While the largest manufacturer employs about 3,500 people, the fiftieth largest employes only 360. The average for about 3,000 of the total number of establishments is less than 35 employees per establishment. In view of
1620 the competitive aspect, reduction in labor costs is significant as those costs are the most important item next to that of the raw materials. The labor costs are from 20 to 28 per cent of the value of the manufactured product; they are more than 40 per cent of the value added by the manufacturer and are about 75 per cent of the purely manufacturing cost. Moreover, they are the most flexible item in the total costs. While the cost of raw materials is about 50 per cent of the total, the prices

of the principal materials are standardized and do not vary greatly from manufacturer to manufacturer. Moreover, since labor costs amount to several dollars on the average suit while transportation costs are only a matter of cents, the search for lower labor costs may be carried on without any regard for the sources of raw materials or the markets for the final product. The migration has thus not been toward such points but toward the lower wage centers. 1621

The shift to low wage areas has been marked. Employment has decreased in those areas where wages have remained stable but increased in places where the wages were lower or less stable. From 1923 to 1929 employment in the industry increased about 20 per cent in cities in which wage earners received less than the average wage, whereas in those cities in which more than the average was paid there were large decreases in employment—38.3 per cent for Chicago, 24.3 per cent for New York, 18.2 per cent for Boston. 1622

II. THE AMALGAMATED CLOTHING WORKERS OF AMERICA

17. The Amalgamated Clothing Workers of America is a labor organization composed of over 125,000 men and women employed in the men's and boys' clothing industry. These members are organized in local unions throughout the United States and Canada. In important industrial centers where there is more than one local, the locals are organized into "joint boards". All locals and other subdivisions are governed by their own by-laws, elect their own officers and manage their own 1623

affairs, subject to the general jurisdiction of the
1624 national organization which is exercised through a General President, General Secretary-Treasurer and a General Executive Board. The supreme authority of the union is vested in the biennial convention to which delegates are elected by all the local unions on the basis of membership. The Amalgamated Clothing Workers has been the representative of workers in the men's clothing industry for over twenty years.

18. The men's clothing industry has long faced and still copes with the problem of the sweatshop.
1625 The units in the industry are relatively small. The reasons for the predominance of medium size and small size factories are, in part, absence of large overhead expenses, small initial capital investment, absence of expensive patents, and the seasonal nature of the industry, which permits a closing of the factory during part of the year. The prevalence of these small establishments led to sweat-shops and all the ills that flow therefrom—low wages, shocking and inhumane working conditions, child labor, home work, unfair competitive advantages to the
1626 employers who ran the sweat-shops and resulting competitive effect upon firms attempting to maintain decent standards, unrest and bitterness on the part of the employees. Of late, moreover, there has been a tendency to maintain sweat-shop conditions in large factories by locating these factories in rural areas and small cities and exploiting the unorganized workers in those places. Out of such conditions grew the Amalgamated Clothing Workers and its history has been a constant attempt through

the medium of collective bargaining to eliminate the sweat-shop and to improve working conditions for the benefit of both manufacturer and employee. Its collective agreements with employers provide for the elimination of home work and child labor and for the maintenance of sanitary working conditions. These collective agreements have also meant shorter hours and higher wages to the workers in addition to better working conditions. In 1934, of the ten firms paying the lowest hourly wages, all were non-union firms, whereas all but one of the ten firms paying the highest wages had agreements with the Amalgamated. The average wage of the first ten firms was 46.25 cents an hour, that of the second ten 79.60 cents an hour. 1627 1628

19. The period before the recognition by the employers of the Amalgamated was marked by long and bitter strikes. In 1921 there had been a general strike in New York City which had lasted for eight months and caused losses of millions of dollars to employers and employees. A similar general strike in New York in 1924 lasted for six weeks and involved all of the 500 firms in that area and their 35,000 workers. The wage loss to the workers was nearly $6,000,000, the financial loss to the manufacturers ran into the millions. In 1910 a strike occurred in the factories of the largest manufacturer of men's clothing in the country, Hart, Schaffner and Marx in Chicago, which employed 6,000 workers, and spread to other plants in the same area. Similar large strikes occurred in Rochester and Chicago at later periods. Smaller strikes and lockouts were frequent. 1629

1630 This costly industrial strife resulted finally in recognition of the Amalgamated by the employers. In 1910 the Hart, Schaffner and Marx firm entered into a collective agreement with its workers, who became members of the Amalgamated upon its organization, and has continued such relations ever since that time. Most of the other Chicago manufacturers made similar agreements in 1919. The New York strike of 1924 was ended by the establishment of a collective agreement between the leading manufacturers and the Amalgamated which was soon joined in by other manufacturers in
1631 that area. Factories in Rochester, Baltimore, Boston, Cincinnati, Cleveland, St. Louis and Philadelphia recognized the union and entered into agreements with it. Today the Amalgamated has collective agreements with clothing manufacturers and contractors employing the greater number of the clothing workers in the United States.

These collective agreements have brought peace to that portion of the industry that has entered such agreements. Since the signing of the agreement in New York, there has not been a strike or lockout involving signatories to the agreement,
1632 who account for about 70 per cent of the clothing manufactured in that area. Since 1919, when the first collective agreement was made there have been no strikes or lockouts in Rochester. The union has attempted to avoid strikes whenever possible and its industrial policy calls for the use of the strike only as a last resort, since it realizes the terrific cost to the employee, the employer and the public. The collective agreements provide for adjustment of grievances by negotiation between the union representatives and the employers' rep-

resentatives. As most of the employers in the major centers are organized into associations so as to obtain the benefits of collective bargaining on the employers' side, the process of negotiation is simplified. The representatives on both sides are well versed in all aspects of the industry. Disputes which cannot be resolved in this manner are referred to arbitration before the impartial machinery established for that purpose by the collective agreement. Through the medium of the various decisions of the Impartial Chairmen who have functioned in the role of arbitrators there has been evolved a "common law" for this industry. The Impartial Chairmen, many of whom are well-known public figures,* testified in their affidavits to the stabilization and peace effected by this collective bargaining and settlement of disputes. 1633 1634

Since the signing of the collective agreement for the New York area, the New York Clothing Manufacturers Exchange, Inc. and the Amalgamated have

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* The following testified in this case: Dr. William M. Leiserson, now Chairman of the National Mediation Board and formerly an Impartial Chairman in Rochester, New York and Chicago, Dr. Henry Moskowitz, Now Impartial Chairman in New York, Professor Harry A. Millis, a member of the former National Labor Relations Board and formerly an Impartial Chairman in Chicago, and Dr. Benjamin M. Squires, formerly Impartial Chairman in Chicago. Other well known men who have acted as Impartial Chairmen are Professor Felix Frankfurter, Professor William Z. Ripley, Professor David Friday, Professor James H. Tufts, Clarence Darrow, Dr. J. L. Magnes, Professor Frank J. Goodnow and Judge Jacob Moses. 1635

handled jointly a total of 21,193 complaints and disputes. In only 898 of these cases, or slightly over 4 per cent, was a resort to arbitration required because of inability to agree. Of these 898, 30 per cent were settled by the Impartial Chairman acting as a mediator; in the remainder he sat as an arbitrator and rendered a decision. In only seven cases has there been willful non-compliance with decisions of the Impartial Chairman and in only two of these seven was it necessary to resort to the courts. In Rochester, since 1928, 395 out of a total of 1,337 cases have been referred to the Impartial Chairman for his decision; the rest have been adjusted by agreement between the representatives of the employers and employees.

20. The Amalgamated has also striven constantly to improve the general economic and social condition of its members. It has evolved a system of unemployment insurance based mainly upon contributions by employers. During the depression it has raised by assessments considerable funds for the relief of unemployed clothing workers. In order to enable the clothing workers to obtain credit and to maintain small saving accounts, it has established banks in New York and Chicago, credit unions and cooperative investment services. It has promoted a number of cooperative apartment houses in New York City, which accomodate over 4,000 people at low rentals. Beside affording comfortable living quarters, these houses furnish cooperative social and educational centers.

21. The Amalgamated has also cooperated with employers in attempts to improve their business.

Processes have been analyzed and rates established in individual shops that enable a given firm to produce a garment which it could market on an equal basis with its competitors. The union has aided in the elimination of overhead expenses by assisting in the consolidation of shops and sections and by assuming responsibility for quality, thereby permitting a sharp reduction in the amount of supervision necessary. Wage rates have been reduced where employees' earnings were excessive. The employers have benefited from the improved morale of the workers. Restrictive practices have been modified and sometimes eliminated entirely when changes in manufacturing or distribution made such restrictions oppressive. By attempting to maintain a fair scale of minimum wages and maximum hours, the Amalgamated has done much to protect the manufacturer from the unfair competition of the wage-cutter and the sweat-shop operator. Since wages and prices in one market affect conditions in other markets, it acts as a stabilizing force in the industry by attempting to eliminate such unfair competition while at the same time preventing dislocation of certain markets by drastic demands on union manufacturers. When its members have ceased work and created a stoppage contrary to a collective agreement, the union has disciplined them and ordered them to return to work. 1639 1640 1641

22. The benefits that flow from recognition of the Amalgamated and cooperation with it have been realized by those manufacturers that have entered into agreements with the Amalgamated. The President of the New York Clothing Manufacturers Exchange, Inc., which represents about 250 manufac-

turers doing about 70 per cent of the total business
1642 in the New York market, has stated that the "organization of collective bargaining machinery, the establishment of an impartial tribunal, and the founding of unemployment insurance are the outstanding achievements" in the industry and that the Amalgamated Clothing Workers "has been perhaps the largest single contributing factor to the lasting peace and harmony that have characterized those clothing markets where the Amalgamated Clothing Workers of America was the other contracting party to the collective agreement". Similarly, the
1643 President of the Clothiers' Exchange of Rochester, New York, which includes 5 leading clothing manufacturers employing 6,500 workers, stated that "once the principle of collective bargaining is recognized and machinery is set up for the adjustment and arbitration of disputes under an agreement reached through collective bargaining, industrial peace may replace industrial war". The labor manager of the New York Clothing Manufacturers Exchange, Inc. testified to the effectiveness of the machinery established to adjust disputes by negotiation and arbitration rather than by strikes and lock-
1644 outs.

III. THE FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

23. The respondent Friedman-Harry Marks Clothing Company, Inc. is a Virginia corporation having its principal office and a plant at Richmond, Virginia. At such plant it is engaged in the purchase of raw materials and the manufacture, sale and distribution of men's clothing.

24. The principal materials used by the respondent in the manufacture of men's clothing are woolen and worsted goods. 99.57 per cent of the woolen and worsted goods so used by the respondent come from States other than the State of Virginia. The selling offices of the manufacturers from whom such materials are purchased are located in New York and 75 per cent of all the woolen and worsted goods used by the respondent was purchased in New York, the remainder being purchased at Richmond. The material so purchased was fabricated in the following States: Massachusetts (50 per cent); Connecticut (10 per cent); New York (8 per cent); Rhode Island (8 per cent); New Jersey (5 per cent); Pennsylvania (4 per cent); South Carolina (3 per cent); Illinois, Indiana and Maine (12 per cent); Virginia (.43 per cent). 1645 1646

25. With respect to the other materials used by the respondent in the manufacture of clothing, the cotton linings come from South Carolina (40 per cent), Georgia (40 per cent), and North Carolina (20 per cent), 95 per cent of the purchases of such linings being made in New York and the remainder in Maryland; rayon linings come entirely from New York; all of the canvas used is bought in and comes from Pennsylvania; all of the thread and other sewing materials and the buttons come from and are bought in New York; all of the shoulder pads are bought in and come from Maryland; the hymo (a hair material used in stiffening lapels) comes from Pennsylvania; the felt and under-collar cloth are purchased in Virginia but come from New York; the silesa and wigan (cheap cotton materials) are purchased in Virginia but come from 1647

South Carolina; and the cotton tape is purchased
1648 in Virginia but comes from Pennsylvania.

26. The respondent acquires title to the woolen and worsted cloth at the point of shipment. Pursuant to its direction the cloth is sent by truck and rail to a sponging firm in New York City for shrinking. After this process is completed, the cloth is shipped to the plant at Richmond by truck or rail.

27. The woolen and worsted cloth is manufactured into men's clothing at its plant in Richmond,
1649 Virginia. The respondent has no work performed for it by contractors nor does it do work for other manufacturers. About 550 employees were employed by respondent in 1932, 625 in 1933, 675 in 1934 and 800 in 1935.

28. Of the garments manufactured by the respondent, 82.8 per cent are purchased by customers located outside of the State of Virginia, as follows: Texas (10 per cent); North Carolina (10 per cent); New York (7 per cent); Illinois (7 per cent); Tennessee (5 per cent); Louisiana (5 per cent);
1650 Indiana, Kentucky, Alabama, Georgia, Maryland, District of Columbia, South Carolina, Florida, Ohio, Missouri, Michigan, Massachusetts, Rhode Island, Connecticut and Pennsylvania. The customers are mainly department stores and men's clothing stores in the larger cities throughout the country. The respondent maintains a sales office and show room in New York City, through which 15 to 20 per cent of the total sales are made. Several officers of the company are usually resident in New York City. It

has eight persons engaged as traveling salesmen, some being officers and members of the Board of Directors. The orders are sent to the Richmond plant, the goods being sold f. o. b. Richmond. They are shipped by railroad, truck, railway express, water or Parcel Post pursuant to the customers' orders. The respondent advertises in the Fairchild's Men's Wear Directory and in the American Clothier. It has a registered trade mark, "Rockingham", for use in commerce among the several States. 1651

29. In 1932 the volume of business amounted to $800,000 and 80,000 units; in 1933 to $1,000,000 and 100,000 units; in 1934 to $1,500,000 and 100,000 units; and for the first ten months of 1935, to $1,750,000 and 150,000 units. This increase is in part due to an investment of $50,000 in the company in 1931 by Louis M. Friedman, formerly engaged in the men's clothing business in New York City. The respondent is among the fifty largest firms in the men's clothing industry and among the ten firms in that group paying the lowest average wage. 1652

IV. THE UNFAIR LABOR PRACTICES

30. The employees of the respondent in the summer of 1935 had formed a local of the Amalgamated Clothing Workers of America and were soliciting membership therein. The management of the respondent at once indicated hostility to the union organization of its employees and declared that it would not permit them to join the Amalgamated. Morton Marks, President of the respondent, at various times verbally expressed his antagonism to the Amalgamated. On June 28, 1935, he told an 1653

employee that union employees would not be per-
1654 mitted to work in the plant and that he was not going to run a union shop. Another employee was told on the same day that the "union was the worst thing in the world". That same month he stated to a group of female employees that "I will fire every damn one that attends the union meeting". During the first week of July, Keeve Marks, Secretary of the respondent, told an employee that "If we hear of your going to those damn meetings, you are going to get fired" and then suggested to him that he go to the union meeting with a number of
1655 employees and "wreck the damn place. Bang on the seats, boo them, stamp upon the floor." Then came a note of caution: "You had better let me know who is going, because if I notice any of you all over there that I do not know are going, you are going to get fired and I don't mean maybe. I don't mind your going if you go and then come back and tell me exactly what they are going to do." In September, Morton Marks told some of the employees that "If the union gets the upper hand of me, I will move my plant away from Richmond", and added "I'll take anybody that does not belong to the
1656 union." On June 28, he discharged three employees, Farley Holder, Holder's sister Beulah Ashworth and her husband, for attending a union meeting, informing them that he was making examples of them since they had all been employed at the plant for a long time. At various times during this period Marks often question the employees about their relations with the union and made clear his enmity towards it.

31. The management of the respondent has maintained surveillance over union meetings and

activities. On June 27, 1935, Morton Marks and the superintendent of the respondent's plant secretly observed a union meeting. On August 21, Marks against watched a union meeting of the respondent's employees. In September he told Katherine Hutchinson, an employee, to attend union meetings and report to him the names of those that attended, paying her $22.50 a week for her services. The management appeared to be well-informed regarding the union activities of their employees. 1657

32. On August 1, 1935, a petition was circulated in the plant by certain employees who requested the others to sign it. The petition stated that the employees desired to express their loyalty to the firm and their satisfaction with working conditions. Moreover, it stated that they resented the activity of the union organizers and their attempts to create dissension. While it is not clear whether the idea of such a petition originated with the management or with the employees, it is obvious that the management was informed of those who refused to sign and that such refusal to sign was regarded as signifying either union membership or approval of the union. In some cases foremen attempted to obtain signatures. In one instance the employee circulating the petition informed another employee who was refusing to sign that the foreman said "sign it or else"—the employee then signed the petition. 1658 1659

33. The complaint alleges that the respondent terminated the employment of a number of named employees because of their union membership and activity. Those cases as to which evidence was given will now be considered in detail:

Decision

1660 (a) Annie Mae Rogers—She had commenced her employment with the respondent as an inspector in April, 1933 and was third in seniority in the group of six inspectors. She joined the union on August 13, 1935 at a social party given by herself and her husband, Albert J. Rogers, for some employees of the respondent and representatives of the union. On September 27 she was "laid off" on the ground that work was slack, although previously work had been shared under such conditions. The following Monday, September 30, she questioned Morton Marks, President of the respondent, about the reason for the "lay-off" and he finally said that
1661 it was "on account of the union". He said he had been informed of the union meeting at her house. A non-union employee was given her job and she had not been recalled to work at the time of the hearing.

(b) Albert J. Rogers—He had been employed by the respondent since July, 1935 as an under presser and was the junior in seniority of the group of five on that operation. He had refused to sign the August 1 petition. On August 13, 1935 he had joined the union with his wife as described in (a)
1662 above. On September 26 he was permitted to leave the plant for the day because of illness. On September 27 he and his wife were told that they were not needed any more. On the same day J. Wesley Owen was also dismissed (see (c) infra). He had not been recalled to work at the time of the hearing.

(c) J. Wesley Owen—He had commenced his employment as an under presser for the respondent in March, 1934. He was the oldest in point of seniority of the five engaged in that operation.

He did not sign the August 1 petition. On August 10, 1935 he joined the union and thereafter attended its meetings and solicited members. On September 27, 1935 he was "laid off" for a day as work was slack. The foreman then sent word by his wife that he was not to return until sent for by him. On Wednesday next, October 2, he returned and asked the foreman why he, the oldest man on the job, was being "laid off"! The foreman told him that it was on account of some remark about slack work. He had not been called back to work at the time of the hearing. 1663

(d) Annie Garnett—She was second in seniority of a group of twelve employed as trimmers in the pants department, having been employed since September, 1931. On August 25, 1935 she joined the union. On September 27 she was "laid off", no reason being given for the action. The foreman sent her word to return next Wednesday and then again sent word by her daughter, Beatrice Garnett, not to return until the second Wednesday. On that day he told her she would be notified when there was work for her. She had not been notified at the time of the hearing. 1664

1665

(e) Beatrice Garnett—She had been employed by the respondent since May, 1935, serging backs in the pants department and was third in seniority of the five on that operation. She joined the union on August 26, 1935. On September 27, the same day on which her mother was "laid off", she likewise was "laid off" by her foreman, who told her to return in a week. At that time, he told her that she would be called when there was work for

her. She had not been recalled at the time of the
1666 hearing.

(f) Madelyn Clarke—She had commenced her employment with the respondent on February 16, 1932 and for most of the time was employed running a button hole machine, being the junior on that operation. On September 25, 1935 she joined the union. On September 27, 1935 she was "laid off" for a week. During that week she met Morton Marks and was asked by him why she had joined the union. She told him that she had not joined and he replied that he was "glad". Subsequently
1667 her foreman stated she would be sent for when needed, but she had not been notified to return at the time of the hearing. The wife of one of the foreman has been working on her machine.

(g) Sylvia Johnson—She had been employed by the respondent at the task of stitching side pockets since January, 1935, and was fourth in seniority of a group of seven. She joined the union on August 24, 1935 and thereafter attended its meetings. She was the only union member of the group. On October 21 she was "laid off", no reason being
1668 given. From the circumstances attending the termination of employment and later conversations with the management it is clear that neither inefficiency nor a lack of work were involved in the termination of employment. She had not been reinstated at the time of the hearing.

(h) Maggie High—She had been employed since June, 1931 as a button sewer and was the senior of the seven on that operation. She did most of

the special work and instructed new employees. She joined the union in July, 1935 and was active 1669
in its affairs. Her foreman, who was friendly to her, about the middle of August discussed her membership in the union and stated that some morning he would have to come around, tear her work and then discharge her for poor work. On October 25, 1935 she was discharged by her foreman. The tenor of his conversation with her indicated that the discharge was for union activity; he said, "Mrs. High, it has come . . . I don't need to go to a lot of explaining, you understand" and she replied "Yes, I do, but I haven't got anything to be sorry for and 1670
nothing to regret". She had not been reinstated at the time of the hearing.

(i) Doris Koch—Finding 33(i) of Case No. C-40, dealing with the prior history of this employee, is here incorporated. A union member whose job was raising pants pockets, she was discharged on November 8, 1935 by the foreman who when asked by her for the reason, said "Well, you are just not satisfied with the job." Her husband, also a union member, had been discharged previously (See Finding 33 (b) in Case No. C-40). She 1671
had not been reinstated at the time of the hearing.

(j) Robert L. Morgan—He had been employed by the respondent since April, 1932 and was a body presser. He joined the union in July, 1935 and was active in its affairs. He refused to sign the August 1 petition. The next day, Mr. November, the superintendent, asked why he "wasn't satisfied". The assistant foreman on one occasion had told him to "keep his nose clean and don't mess with

the union". On November 4, the superintendent
1672 told Morgan that he was going to fire everybody that belonged to the union and asked him where he stood. On November 8 he was discharged by the superintendent, who informed him that the discharge was on account of his membership in the union. He had not been recalled to work at the time of the hearing.

(k) Isaac Kenny—On November 4, the superintendent told Morgan, the employee referred to in (j) above, that he was going to fire Kenny, another employee, because he was a member of the union.
1673 Ten minutes later Kenny was discharged. He had not been reinstated at the time of the hearing.

34. On November 18, 1935, the superintendent of the plant, Mr. November, sent for nine or ten of the union members who had been discharged. Of the employees mentioned in Finding 33 above, Albert J. Rogers, Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson and Doris Koch, attended this meeting. In the presence of the entire group November questioned each in regard to the union, asking why they had joined
1674 and what they now thought about the union. He informed them that "he wasn't going to have any union in the factory". He then dismissed them, saying that he would let them know when he wanted them. At the time of the hearing none of those present had received any further word from the respondent.

35. Considering the circumstances in each of the above cases in connection with the undeniable and

open antagonism of the respondent toward the union, its attempts ruthlessly to stamp out the union's existence at the plant, the conduct of the superintendent at the meeting called by him on November 18, and the respondent's failure to offer any explanation of such acts, we conclude that the employment of each of the employee's mentioned in Finding 33 above was terminated as therein described because of their membership in the Amalgamated Clothing Workers of America and their activities in connection with that organization. It is significant that many of these discharges occurred on the same day and that in several cases an entire family was affected. Moreover, the callousness of the respondent toward its employees and its firm determination to defy the National Labor Relations Act are indicated by the fact that several of the discharges occurred after the issuance of a complaint against it by this Board charging the company with engaging in unfair labor practices through discriminatory discharges and lay-offs (see Case No. C-40). 1675 1676

36. Interference by employers in the men's clothing industry with the activities of employees in joining and assisting labor organizations and their refusal to accept the procedure of collective bargaining has led and tends to lead to strikes and other labor disputes that burden and obstruct commerce and the free flow thereof. In those cases where the employees have been permitted to organize freely and the employers have been willing to bargain collectively, strikes and industrial unrest have gradually disappeared, as shown in Finding 19. But where the employer has taken the 1677

1678 contrary position, strikes have ensued that have resulted in substantial or total cessation of production in the factories involved and obstruction to and burden upon the flow of raw materials and finished garments in interstate commerce.

37. The President of the respondent stated on September 26, 1935, that the labor difficulties in the plant had seriously curtailed their production. The plant had produced 84,000 units in the spring and would probably be able to produce only 60,000 in the fall of 1935. One customer in a Western State had refused to give the respondent an order of
1679 30,000 units since he had heard a strike was impending in the plant and he therefore could not be certain that the respondent would be able to fill the order.

38. Since no evidence was introduced with respect to the cases of Reba Holder, Edna Hicks and Lillian Tunstall, the Trial Examiner rightly dismissed the allegations in the complaint regarding these employees.

CONCLUDING FINDINGS OF FACT AND
1680 ## CONCLUSIONS OF LAW

39. The Amalgamated Clothing Workers of America is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

40. By terminating the employment of Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett and Madelyn

Clarke on September 27, 1935, Sylvia Johnson on October 21, 1935, Maggie High on October 25, 1935, Isaac Kenny on November 4, 1935, Doris Koch and Robert L. Morgan on November 8, 1935, as described in Findings 33, 34 and 35 above, and by each of said acts, the respondent did discriminate in regard to tenure of employment and has thereby discouraged membership in the labor organization known as the Amalgamated Clothing Workers of America. 1681

41. By the acts described in Findings 33, 34 and 35 above, and by each of them, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act. 1682

42. The aforesaid acts of respondent occurred in the course and conduct of commerce among the several States and immediately affect employees engaged in the course and conduct of such commerce.

43. The aforesaid acts of respondent have burdened and obstructed the course and conduct of commerce among the several States and lead and tend to lead to labor disputes burdening or obstructing such commerce and the free flow thereof. 1683

Upon the basis of the foregoing the Board finds and concludes as a matter of law:

(a) Respondent, by discriminating in regard to the tenure of employment of Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and

Robert L. Morgan, and by each of said acts, has
1684 engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

(b) Respondent, by discouraging membership in the labor organization known as the Amalgamated Clothing Workers of America by discriminating in regard to the tenure of employment of Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn
1685 Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivi-
1686 sion (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Friedman-Harry Marks Clothing Company, Inc., and its officers and agents, shall:

1. Cease and desist (a) from discharging any of its employees or otherwise discriminating in regard to the tenure and conditions of their employment, and from threatening such action, for the reason that such employees have joined or as-

sisted the Amalgamated Clothing Workers of America or otherwise engaged in union activity; 1687
and (b) from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Take the following affirmative action which the Board finds will effectuate the policies of the 1688
Act:

(a) Offer to Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice 1689
Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan for the loss of pay they have suffered by reason of the termination of their employment by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of termination of employment, as stated in the findings of fact, to the date of such offer of reinstatement, computed in this case

by averaging the wages earned during said period
1690 by the employees engaged in the same operations, respectively, as were the above employees prior to the termination of their employment;

(c) Post immediately notices to its employees in conspicuous places stating (1) that the respondent will cease and desist as provided in Paragraph One of this Order, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

And it is further ordered,

1691

3. That the complaint be, and hereby is, dismissed with respect to the allegations of Paragraph 4 respecting Reba Holder, Edna Hicks and Lillian Tunstall and so much of the allegations of Paragraphs 5, 6, and 8 as depend upon the aforesaid allegations.

Signed at Washington, D. C. this 28th day of March 1936.

J. Warren Madden,
Chairman.

1692 John M. Carmody,
Member.

NATIONAL LABOR RELATIONS BOARD

(SEAL)

Order

IN THE UNITED STATES CIRCUIT COURT OF APPEALS 1693

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., Respondent.	October Term, 1935 No. 425 No. 426

1694

Present:

Upon stipulation of the parties and having heard counsel and due consideration having been given, it is ordered that the case of National Labor Relations Board, Petitioner, v. Friedman-Harry Marks Clothing Company, Inc., Respondent, No. 425, and the case of National Labor Relations Board, Petitioner, v. Friedman-Harry Marks Clothing Company, Inc., Respondent, No. 426, which 1695 cases are now pending before this Court, be consolidated for all purposes including argument, briefs and consideration by the Circuit Court of Appeals, and that the transcripts of the proceedings in the two matters before the National Labor Relations Board be incorporated in one record.

And it is further ordered that the printed record in the two cases as consolidated consist of the following:

Order

1. The entire record as certified to the Court
1696 by the National Labor Relations Board in the matter before it known as Case No. C-40 which is No. 425 before this Court except

   a. The rules and Regulations of the National Labor Relations Board.

   b. Charts introduced in evidence before the National Labor Relations Board.

   c. A pamphlet entitled "Ten Years of the New York Clothing Manufacturers Exchange,
1697 Inc." introduced as exhibits before the National Labor Relations Board.

2. The entire record as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-50 which is No. 426 before this Court except

   a. The exhibits introduced in evidence in the proceeding before the National Labor Relations Board which were read into the record in Case No. C-40 before the National
1698 Labor Relations Board, and accordingly need not be reprinted in Case No. C-50.

And it is further ordered that the following documents need not be printed in the record but shall be considered along with and as part of the record:

   a. The Rules and Regulations of the National Labor Relations Board.

b. Charts introduced in evidence before the National Labor Relations Board.

1699

c. A pamphlet entitled "Ten Years of the New York Clothing Manufacturers Exchange, Inc." introduced as an exhibit before the National Labor Relations Board.

And it is further ordered that the National Labor Relations Board submit to the Court five copies of said Rules and Regulations, charts, and pamphlet entitled "Ten Years of the New York Clothing Manufacturers Exchange, Inc."

1700

By the Court:

.....

United States Circuit Court Judge.

1701

Stipulation

1702 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., Respondent.	October Term, 1936. No. 425 No. 426

1703

Whereas in the proceeding before the National Labor Relations Board entitled "In the Matter of Friedman-Harry Marks Clothing Company, Inc., and Amalgamated Clothing Workers of America", which is Case No. C-40 before the National Labor Relations Board, an affidavit executed by H. K. Herwitz on December 3, 1935, was read into the record and appears in the stenographic transcript of

1704 said record in pages 76 to 154, and whereas in the proceeding before the National Labor Relations Board entitled "In the Matter of Friedman-Harry Marks Clothing Company, Inc., and Amalgamated Clothing Workers of America", which is Case No. C-50 before said Board, the same affidavit of H. K. Herwitz was introduced into evidence as a physical exhibit and identified as part of Board's Exhibit No. 2, and whereas in the certified transcript of the record in said proceeding before said Board known as Case No. C-40 it appears that a portion of said H. K. Herwitz's affidavit was omitted from the

record, and whereas the portion of H. K. Herwitz's affidavit which was omitted from the record in 1705
Case No. C-40 appears in the affidavit of H. K. Herwitz which was introduced in evidence in Case No. C-50 as part of Board's Exhibit No. 2 at page 11 (identified as Board's Exhibit No. 2-11) thereof, and whereas all of page 11, identified as Board's Exhibit No. 2-11, in Case No. C-50 was omitted in Case No. C-40 except for certain footnotes, and whereas the omitted portion of page 11 should be included as part of the record in Case No. C-40 and should commence at the end of page 88 of the stenographic transcript in Case No. C-40 after the words "and sixteenth in the amount". 1706

It is hereby stipulated and agreed by and between the above-named parties through their respective attorneys that, commencing at the end of page 88 of the stenographic transcript of the proceeding before the National Labor Relations Board known as Case No. C-40 (also known as Case No. V-C-1) before said Board after the words "and sixteenth in the amount", there shall be inserted and incorporated in the record all of page 11 identified as Board's Exhibit No. 2-11 introduced in evidence in the proceeding before the National Labor Relations 1707
Board known as Case No. C-50 (also known as Case No. V-C-4) with the exception of footnotes appearing on said page 11 which are already in the stenographic transcript in Case No. C-40.

(Sd) Charles Fahy
Attorney for Petitioner.

WEINBERG & SWEETEN
Attorneys for Respondent.
By: Harry J. Green

Dated: June 2, 1936.

570 In the United States Circuit Court of Appeals for the Second Circuit

No. , October Term, 1935

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., RESPONDENT

Amendments to petition for the enforcement of an order of the National Labor Relations Board

To the honorable the Judges of United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board herewith amends its "Petition for the Enforcement of an Order of the National Labor Relations Board", which said Petition was filed in the United States Circuit Court of Appeals for the Second Circuit on April 2, 1936, is known upon the records of the Board as Case No. C–40, and is awaiting the determination of said Circuit Court of Appeals, as follows:

1. By substituting in place of paragraph (6) of said petition the following:

"6. The said order was duly served upon respondent on March 30, 1936, and at all times since its said issuance and service, has been in full force and effect."

2. By adding thereto a new paragraph as follows:

"7. At all times from the service of said order upon respondent on March 30, 1936, down to and including the date of the filing of this petition on April 2, 1936, and thereafter down to and including the 8th day of May, 1936, the respondent has wholly
571 failed and refused to comply with each and every part of said order, has been and now is in default under the provisions of said order, and upon information and belief, will not in the future comply with said order unless ordered so to do by this Honorable Court; that prior to the date of the decision and order of the Board and from time to time during the proceedings against respondent under the Act, eventuating March 28, 1936, in said decision and order, respondent, through its counsel representing it in said proceedings, advised the Board, through counsel for it in said proceedings, that respondent would not comply with any order made by the Board under the statute to cease and desist from the unfair labor practices alleged and would, should such order be made, avail itself the remedy provided in the Act for determining judicially the validity of such order, if made."

3. By adding thereto a new paragraph as follows:

"8. On March 30, 1936, following the receipt by the respondent of said order of the Board, respondent filed in the Circuit Court

of Appeals for the Fourth Circuit on March 31, 1936, a petition to review and set aside the said order of the Board, thereby expressly refusing to comply with each and every provision of said order until required so to do by order of a Circuit Court of Appeals of the United States.

4. By adding thereto a new paragraph as follows:

"9. On April 2, 1936, the Board filed in the United States Circuit Court of Appeals for the Second Circuit typewritten
572 transcripts of the entire record in the above Circuit, to dispense with printing prior to such filing; and thereupon, upon information and belief, the Clerk of the United States Circuit Court of Appeals for the Second Circuit on April 2, 1936, mailed a notice to the respondent of the filing in said Court of the Petition and transcripts herein."

J. WARREN MADDEN,
Chairman.
JOHN M. CARMODY,
Member.
EDWIN S. SMITH,
Member.
National Labor Relations Board.

CHARLES FAHY,
General Counsel,
National Labor Relations Board,
Washington, D. C.

573 DISTRICT OF COLUMBIA, *ss:*

J. Warren Madden, being duly sworn, deposes and says that he is the Chairman of the National Labor Relations Board and makes this affidavit in behalf of himself and of said Board; that he has read the foregoing amendments to a petition for the enforcement of an order of the National Labor Relations Board and has knowledge of the facts stated therein; and that the statements made in the foregoing amendments are true to the best of his knowledge and belief.

J. WARREN MADDEN,
Chairman, National Labor Relations Board.

Subscribed and sworn to before me, this 8th day of May, 1936.
[SEAL] JOHN E. LOWYER,
Notary Public, District of Columbia.

My commission expires September 8, 1939.

574 In the United States Circuit Court of Appeals for the Second Circuit

NLRB-49.

Case No.

In the Matter of

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., RESPONDENT

Affidavit as to service

DISTRICT OF COLUMBIA, *ss:*

I, Ruth Adams, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 8th day of May, 1936, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Amendments to Petition to the following named persons, addressed to them at the following addresses: Weinberg & Sweeten, Baltimore Trust Building, Baltimore, Maryland.

RUTH ADAMS.

Subscribed and sworn to before me this 8th day of May, 1936.

[SEAL] JOHN E. LOWYER,
Notary Public, District of Columbia.

My commission expires September 8, 1939.

575 In the United States Circuit Court of Appeals for the Second Circuit

No. October Term, 1935

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., RESPONDENT

Amendments to petition for the enforcement of an order of the National Labor Relations Board

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board herewith amends its "Petition for the Enforcement of an Order of the National Labor Relations Board", which said Petition was filed in the United States Circuit Court of Appeals for the Second Circuit on April 2, 1936, is

known upon the records of the Board as Case No. C–50, and is awaiting the determination of said Circuit Court of Appeals, as follows:

1. By substituting in place of paragraph (6) of said petition the following:

"6. The said order was duly served upon respondent on March 30, 1936, and at all times since its said issuance and service, has been in full force and effect."

2. By adding thereto a new paragraph as follows:

"7. At all times from the service of said order upon respondent on March 30, 1936, down to and including the date of the filing of this petition on April 2, 1936, and thereafter down to and including the 8th day of May, 1936, the respondent has wholly failed and
576 refused to comply with each and every part of said order, has been and now is in default under the provisions of said order, and upon information and belief, will not in the future comply with said order unless ordered so to do by this Honorable Court; that prior to the date of the decision and order of the Board and from time to time during the proceedings against respondent under the Act, eventuating March 28, 1936, in said decision and order, respondent, through its counsel representing it in said proceedings, advised the Board, through counsel for it in said proceedings, that respondent would not comply with any order made by the Board under the statute to cease and desist from the unfair labor practices alleged and would, should such order be made, avail itself the remedy provided in the Act for determining judicially the validity of such order, if made."

3. By adding thereto a new paragraph as follows:

"8. On March 30, 1936, following the receipt by the respondent of said order of the Board, respondent filed in the Circuit Court of Appeals for the Fourth Circuit on March 31, 1936, a petition to review and set aside the said order of the Board, thereby expressly refusing to comply with each and every provision of said order until required so to do by order of a Circuit Court of Appeals of the United States"

4. By adding thereto a new paragraph as follows:

"9. On April 2, 1936, the Board filed in the United States Circuit Court of Appeals for the Second Circuit typewritten transcripts of the entire record in the above-entitled matter, upon leave obtained from Honorable Learned Hand, Judge of the Circuit Court
577 of Appeals for the Second *entitled matter, upon leave obtained from Honorable Learned Hand, Judge of the Circuit Court of Appeals for the Second* Circuit, to dispense with printing prior to such filing; and thereupon, upon information and belief, the Clerk of the United States Circuit Court of Appeals for the

Second Circuit on April 2, 1936, mailed a notice to the respondent of the filing in said Court of the Petition and transcripts herein."

J. WARREN MADDEN,
Chairman,
JOHN M. CARMODY,
Member,
EDWIN S. SMITH,
Member,
National Labor Relations Board.

CHARLES FAHY,
General Counsel,
National Labor Relations Board,
Washington, D. C.

578 DISTRICT OF COLUMBIA, *ss:*

J. Warren Madden, being duly sworn, deposes and says that he is the Chairman of the National Labor Relations Board and makes this affidavit in behalf of himself and of said Board; that he has read the foregoing amendments to a petition for the enforcement of an order of the National Labor Relations Board and has knowledge of the facts stated therein; and that the statements made in the foregoing amendments are true to the best of his knowledge and belief.

J. WARREN MADDEN,
Chairman, National Labor Relations Board.

Subscribed and sworn to before me, this 8th day of May, 1936.

[SEAL] JOHN E. LOUYER,
Notary Public, District of Columbia.

My commission expires September 8, 1939.

579 In the United States Circuit Court of Appeals for the Second Circuit

NLRB-49

Case No.

In the Matter of

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., RESPONDENT

Affidavit as to service

DISTRICT OF COLUMBIA, *ss:*

I, Ruth Adams, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 8th day of May, 1936, I mailed postpaid, bearing Government frank, by registered

mail, a copy of the Amendments to Petition to the following named persons, addressed to them at the following addresses: Weinberg & Sweeten, Baltimore Trust Building, Baltimore, Maryland.

RUTH ADAMS.

Subscribed and sworn to before me this 8th day of May, 1936.

[SEAL] JOHN E. LOUYER.
Notary Public District of Columbia

My commission expires September 8, 1939.

580 United States Circuit Court of Appeals for the Second Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

against

FRIEDMAN HARRY MARKS CLOTHING CO., INC., RESPONDENT

Before MANTON, SWAN, and A. N. HAND, Circuit Judges

Petitions for the enforcement of two orders of the National Labor Relations Board directing respondent to cease and desist from certain unfair labor practices. The Board files the petitions under § 10 (e) of the National Labor Relations Act, July 5, 1935, 49 Stat. 449, 29 U. S. Code, § 150 et seq. Petitions denied.

WEINBERG & SWEETEN,
Attorneys for Respondent.
LEONARD WEINBERG,
HARRY J. GREEN,
ZANVYL KRIEGER,
Of Counsel.
J. WARREN MADDE',
Chairman.
CHARLES FAHY,
General Counsel.
ROBERT B. WATTS,
Associate General Counsel.
THOMAS I. EMERSON,
LAURENCE A. KNAPP,
A. L. WIRIN,
Attorneys.

PER CURIAM. The respondent, a Virginia corporation, is a manufacturer of men's clothing with its principal office and its
581 factory in Richmond, Va. Practically all the raw materials used are brought from other states into Virginia where respondent manufactures them into men's clothing. About 83% of the manufactured products are sold f. o. b. Richmond, to customers located in states other than Virginia.

Two sets of charges were filed with petitioner's local Regional Director by the Amalgamated Clothing Workers of America, a labor union of workers in the men's clothing industry, in which it was alleged that the respondent violated the National Labor Relations Act by discharging from its employ, and discriminating against, 29 out of 800 of its employees, because they had engaged in union activities. The Board filed complaints under § 10 (b) of the Act and after a hearing respondent was found to have violated the Act and was ordered to cease and desist from the unfair labor practices.

Petitioner's theory is that the respondent is engaged in interstate commerce because of the shipment of raw materials to it from other states and the shipment of its finished products to other states, and in addition, that the flow of commerce doctrine, as exemplified in Swift & Co. v. United States (196 U. S. 375), brings this manufacturer within the federal power to regulate commerce. Respondent contends that the National Labor Relations Act as applied to it, is unconstitutional and therefore invalid and that the attempt to enforce its provisions against it is illegal.

It is shown that the alleged unfair labor practices complained of occurred in the manufacture of clothing in Richmond, Va.
582 None of the workers involved had to do with the transportation of the clothing after its manufacture. They were engaged in various operations in the Richmond factory.

The relations between the employer and its employees in this manufacturing industry were merely incidentals of production. In its manufacturing, respondent was in no way engaged in interstate commerce, nor did its labor practices so directly affect interstate commerce as to come within the federal commerce power. Carter v. Carter Coal Co. (May 18, 1936); Schechter v. United States, 295 U. S. 495. No authority warrants the conclusion that the powers of the Federal Government permit the regulation of the dealings between employers or employees when engaged in the purely local business of manufacture.

Therefore the orders to cease and desist may not be enforced.

Petitions denied.

583 United States Circuit Court of Appeals, Second Circuit

V–C–1

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRIEDMAN-HARRY MARKS CLOTHING CO., INC., RESPONDENT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the United States Court House in the City of New York, on the 20th day of July, one thousand nine hundred and thirty-six.

Present: Hon. MARTIN T. MANTON, Hon. THOMAS W. SWAN, Hon. AUGUSTUS N. HAND, *Circuit Judges.*

A petition having been filed herein by counsel for the National Labor Relations Board for the enforcement of an order issued against the respondent;

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

WM. PARKIN, *Clerk.*

584 United States Circuit Court of Appeals, Second Circuit

NATIONAL LABOR RELATIONS BOARD

vs.

FRIEDMAN-HARRY MARKS CLOTHING CO., INC.

ORDER

United States Circuit Court of Appeals, Second Circuit. Filed July 20, 1936. William Parkin, clerk.

585 United States Circuit Court of Appeals, Second Circuit

V–C–4

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRIEDMAN-HARRY MARKS CLOTHING CO., INC., RESPONDENT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the United States Court House in the City of New York, on the 20th day of July, one thousand nine hundred and thirty-six.

Present: Hon. MARTIN T. MANTON, Hon. THOMAS W. SWAN, Hon. AUGUSTUS N. HAND, *Circuit Judges.*

A petition having been filed herein by counsel for the National Labor Relations Board for the enforcement of an order issued against the respondent;

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

WM. PARKIN, *Clerk.*

586 United States Circuit Court of Appeals, Second Circuit

NATIONAL LABOR RELATIONS BOARD

vs.

FRIEDMAN-HARRY MARKS CLOTHING CO., INC.

ORDER

United States Circuit Court of Appeals, Second Circuit. Filed July 20, 1936. William Parkin, clerk.

587 In the United States Circuit Court of Appeals for the Second Circuit

No. 425, No. 426. October Term, 1935

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., RESPONDENT

Stipulation

It is hereby stipulated and agreed by and between the above-named parties through their respective attorneys that, if the National Labor Relations Board, petitioner herein, should petition the Supreme Court of the United States for certiorari, or if the case should otherwise be taken to the United States Supreme Court, the following enumerated documents need not be printed and shall not constitute part of the record before the United States Supreme Court:

"1. Motion of Respondent, appearing specially, that the petition for the enforcement of the order of the National Labor Relations Board be denied and dismissed, verified April 8, 1936, filed in Case No. 425.

"2. Motion of Respondent, appearing specially, that the petition for the enforcement of the order of the National Labor Relations Board be denied and dismissed, verified April 8, 1936, filed in Case No. 426.

"3. Affidavit of Edwin S. Smith in opposition to respondent's petition, subscribed and sworn to on April 18, 1936, and filed in Case No. 425, with affidavits attached including a certificate of incorporation of Friedman-Harry Marks Clothing Company, Inc., certificate of Frank S. Sharp, Deputy Secretary of State, dated April 17, 1936, certificate of Walter Christian, Clerk of the Hustings Court of the City of Richmond, dated May 26, 1932, verification signed by M. L. Hirshberg, notary public, on May 26, 1932, and affidavit of Lester M. Levin, sworn to on April 20, 1936.

4. Affidavit of Edwin S. Smith in opposition to respondent's petition, filed in Case No. 426 and subscribed and sworn to on April 18, 1936, and affidavit of Lester M. Levin sworn to on April 20, 1936.

588 "5. Opinion of the United States Circuit Court of Appeals for the Second Circuit, dated May 6, 1936, rendered on motions to dismiss filed by plaintiff.

"6. Order of United States Circuit Court of Appeals for the Second Circuit denying respondent's motion to dismiss in Case No. 425 and rendered on May 13, 1936.

"7. Order of United States Circuit Court of Appeals for the Second Circuit denying respondent's motion to dismiss in Case No. 426 and rendered on May 13, 1936.

"8. Petition of National Labor Relations Board, petitioner, in Cases Nos. 425 and 426 for rehearing for purpose of modifying opinion.

"9. Opinion of United States Circuit Court of Appeals for the Second Circuit denying petition for rehearing for purpose of modifying opinion.

"10. Order of United States Circuit Court of Appeals for the Second Circuit denying petition for rehearing dated May 27, 1936."

CHARLES FAHY,
Attorney for Petitioner.
WEINBERG & SWEETEN,
By HARRY J. GREEN,
Attorneys for Respondent.

589 In the United States Circuit Court of Appeals
for the Second Circuit

No. 425, No. 426. October Term, 1935

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC., RESPONDENT

Present:

Order

This matter having come on to be heard upon stipulation of the above named parties through their respective attorneys, and due consideration having been given, it is hereby ordered that, if the National Labor Relations Board, petitioner herein, should petition the Supreme Court of the United States for certiorari, or if the case should otherwise be taken to the United States Supreme Court, the following enumerated documents need not be printed and shall not constitute part of the record before the United States Supreme Court:

"1. Motion of Respondent, appearing specially, that the petition for the enforcement of the order of the National Labor Relations Board be denied and dismissed, verified April 8, 1936, filed in Case No. 425.

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590 "4. Affidavit of Edwin S. Smith in opposition to respondent's petition, filed in Case No. 426 and subscribed and sworn to on April 18, 1936, and affidavit of Lester M. Levin sworn to on April 20, 1936.

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"9. Opinion of United States Circuit Court of Appeals for the Second Circuit denying petition for rehearing for purpose of modifying opinion.

"10. Order of United States Circuit Court of Appeals for the Second Circuit denying petition for rehearing dated May 27, 1936."

Per Curiam:

MARTIN T. MANTON,
Judge of Circuit Court of Appeals for the Second Circuit.

Date: August 17, 1936.

591 United States of America, Southern District of New York

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 590, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of National Labor Relations Board, petitioner, against Friedman-Harry Marks Clothing Co., Inc., respondent, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Co
be hereunto affixed, at the City of New York, in the Southern Di
of New York, in the Second Circuit, this 17th day of August, i
year of our Lord one thousand nine hundred and thirty-six, a
the Independence of the said United States the one hundred
sixty-first.

[SEAL] WM. PARKIN, Cl

592 Supreme Court of the United States

No. 422, October Term, 1936

Order allowing certiorari

Filed November 9, 1936

The petition herein for a writ of certiorari to the United
Circuit Court of Appeals for the Second Circuit is granted, an
case is assigned for argument immediately following Nos. 42
421.

And it is further ordered that the duly certified copy of the
script of the proceedings below which accompanied the petition
be treated as though filed in response to such writ.

593 Supreme Court of the United States

No. 423, October Term, 1936

Order allowing certiorari

Filed November 9, 1936

The petition herein for a writ of certiorari to the United
Circuit Court of Appeals for the Second Circuit is granted, an
case is assigned for argument immediately following Nos. 42
421.

And it is further ordered that the duly certified copy of the
script of the proceedings below which accompanied the petition
be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING

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In the Supreme Court of the United States

OCTOBER TERM, 1936

Nos. 422, 423

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, entered in the above cause on July 20, 1936 (R. 578), denying petitions by the National Labor Relations Board for the enforcement of its cease and desist orders against the Friedman-Harry Marks Clothing Company, Inc., made pursuant to the National Labor Relations Act.

OPINIONS BELOW

The findings of fact and orders of the National Labor Relations Board (R. 375–412, 527–564) and the opinion of the Circuit Court of Appeals (R. 576) have not yet been reported.

JURISDICTION

The judgments of the Circuit Court of Appeals for the Second Circuit was entered July 20, 1936 (R. 578). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, as applied to this company, the National Labor Relations Act is a valid exercise of the power of Congress to regulate commerce among the States and with foreign nations.

2. Whether the provisions of the National Labor Relations Act here involved violate Article III of the Constitution in that they delegate judicial powers to the National Labor Relations Board.

3. Whether the provisions of the National Labor Relations Act here involved violate the First Amendment to the Constitution in that they improperly abridge respondent's freedom of speech.

4. Whether the provisions of the National Labor Relations Act here involved violate the Fifth Amendment to the Constitution in that they deprive respondent of liberty or property without due process of law.

5. Whether the provisions of the National Labor Relations Act here involved violate the Seventh Amendment to the Constitution in that they improperly deprive respondent of the right of trial by jury.

STATUTE INVOLVED

The National Labor Relations Act is printed as an Appendix to the petition for certiorari in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* No. ——, filed herewith, to which the Court is respectfully referred.

STATEMENT

On September 28, 1935, and November 11, 1935, written charges against respondent, the Friedman-Harry Marks Clothing Company, Inc., were filed with the Regional Director for the Fifth Region of the National Labor Relations Board, pursuant to Section 10 (b) of the National Labor Relations Act (printed in Appendix of petition for certiorari in No. 419, p. 25) (R. 11–14, 424–425). The charges were filed by the Amalgamated Clothing Workers of America, and alleged that respondent had engaged in, and was continuing to engage in unfair labor practices within the meaning of the Act.

On October 26, 1935, and November 19, 1935, pursuant to Section 10 (b) of the Act, the Regional Director issued and served upon respondent complaints and notices of hearings (R. 15–23, 426–431). These complaints alleged unfair labor practices affecting commerce within the meaning of subsections (1), (3) and (4) of Section 8, and subsections (6) and (7) of Section 2, and fixed November 6 and December 5, 1935, for a hearing before an examiner (R. 22, 430). An objection was filed in answer to each complaint, urging the lack

of jurisdiction of the Board over respondent and, without waiving its rights under its special appearances, denying the allegations of violation (R. 25–32, 431–439). On December 5, 1935, a hearing was held before a trial examiner, respecting both complaints, in Richmond, Virginia. Respondent, contesting the jurisdiction of the Board and the constitutionality of the Act, participated and presented evidence only in respect to the nature of its business operations.

On March 28, 1936, the Board handed down its decisions setting forth its findings of fact (R. 379–409, 530–562) and the orders here in question (R. 409–412, 562–564). These findings of fact may be summarized as follows:

Respondent is a Virginia corporation engaged in the manufacture, sale, and distribution of men's clothing, with its principal office and plant at Richmond, Virginia (R. 396). Its volume of business in 1932 was $800,000; in 1933, $1,000,000; in 1934, $1,500,000; and the first ten months of 1935, $1,750,000. In the same years its employees totalled, respectively, 550, 625, 675, and 800. (R. 398–399.)

The principal materials used by respondent in the manufacture of its finished products are woolen and worsted goods. Over 99 per cent of such materials used by respondent come from States other than Virginia, and 75 per cent are purchased pursuant to contracts made in New York City. The

materials so purchased and used by respondent are fabricated mainly in Massachusetts, Connecticut, New York, Rhode Island, New Jersey, and Pennsylvania. Immediately after purchase, the woolen goods are shipped to New York City, where they are sponged and then transshipped to the Richmond plant. Other materials, such as linings, thread, and sewing materials, are also purchased and shipped to the Richmond plant almost exclusively from without the State of Virginia. (R. 397–398.)

Over 80 per cent of all finished garments made at the Virginia plant are sold and shipped to customers, mainly department and men's clothing stores, located outside the State of Virginia. To facilitate sales, respondent maintains a sales office and show room in New York City where 15 to 20 per cent of all sales are made. It employs eight traveling salesmen, who operate in many States, and advertises in certain trade publications. It has a registered trade mark, "Rockingham", for use in interstate commerce. (R. 398–399.)

Respondent's plant is typical of the industry. The ultimate market for its products is, of course, nation-wide. In 21 States, however, no men's clothing is produced (R. 385), and 95 per cent of the establishments in the industry are located in eight States (R. 382). Furthermore, only one of those eight States is among the five in New England which in 1929 produced 65 per cent of suiting

fabrics and 74 per cent of overcoating fabrics (R. 384). The major portion of the industry, as well as respondent, depends upon the uninterrupted flow of interstate commerce (R. 387).

The employees found to have been discriminated against were engaged in production operations at the Richmond plant (R. 402–406, 554–558). Each of them belonged to the local union of the Amalgamated Clothing Workers of America, an inclusive labor organization of the industrial type (R. 389–390). It was the activity of these employees in connection with this organization which caused the discrimination against them. (R. 402–405.)

In conclusion, the Board found that interference by employers in the industry with the activities of their employees in joining and assisting labor organizations and their refusal to accept the procedure of collective bargaining leads to strikes and other labor disputes which burden and obstruct the free flow of commerce (R. 406, 561).

On the basis of these findings the Board decided, as a matter of law, that respondent was engaged in unfair labor practices affecting commerce within the terms of Section 8, subsections (1), (3), and (4), and Section 2, subsections (6) and (7) of the Act (R. 409, 562). It therefore issued an order requiring respondent to cease and desist from discharges, threats of discharge, and other practices tending to interfere with or restrain the organization of its employees, and ordering respondent to

offer reinstatement with back pay to the employees found to have been discharged or laid off in violation of the Act, and to post notices stating that it would comply with the order (R. 409–412, 562–564).

On March 28, 1936, the Board filed in the court below its petitions for enforcement of the orders it had entered (R. 1–7, 413–419). By leave of court the two petitions were consolidated (R. 565–567). On July 20, 1936, the court below entered its judgments denying the petitions of the Board for the reason that the order transcended the power of Congress under the commerce clause of the Constitution. The court did not pass upon the other constitutional objections urged by respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the order of the Board herein was not one authorized to be made under the authority of Congress.

(2) In construing the Board's order in this case as being directed merely to respondent's production operations and production employees, rather than to the protection of respondent's interstate commerce against direct and substantial burdens brought about by industrial strife among any or all of respondent's employees, as well as others.

(3) In holding that the Act as applied herein is not an appropriate exercise of the power and responsibility of Congress under the commerce clause

of the Constitution to protect interstate commerce from burdens and obstructions from whatever source.

(4) In holding in effect that the particular origin of industrial strife characterizes the nature of the resulting burden or obstruction upon interstate commerce, and in not judging the nature of such burden or obstruction, in its relation to interstate commerce, from the character and potentialities of the strife itself.

(5) In holding that the decisions of this Court in *Carter* v. *Carter Coal Co.*, Nos. 636 and 651, October Term, 1935, decided May 18, 1936, and *A. L. A. Schechter Corp.* v. *United States*, 295 U. S. 495, involving the Bituminous Coal Conservation Act of 1935, and the National Industrial Recovery Act, respectively, were conclusive as to the non-applicability of the National Labor Relations Act under the facts of this case.

(6) In failing to hold that the Act is not in contravention of the Fifth Amendment or any other provision of the Constitution.

(7) In denying the petitions of the National Labor Relations Board.

REASONS FOR GRANTING THE WRIT

This case presents issues similar to those involved in *National Labor Relations Board* v. *Jones & Laughlin Steel Company*, No. 419, present term, in which a petition for a writ of certiorari has been filed herewith. In each case the appli-

cation of the National Labor Relations Act to the particular respondent has been held to be beyond the power of Congress under the commerce clause of the Constitution—a decision of vital public interest. The Court is, therefore, respectfully referred to pages 10 to 14 of the petition in the *Jones & Laughlin* case for a statement of the reasons why the Government believes that a writ of certiorari should issue in these cases.

Wherefore, it is respectfully submitted that this petition for writs of certiorari should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

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In the Supreme Court of the United States

OCTOBER TERM, 1936

Nos. 422, 423

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 575–576) is reported in 85 F. (2d) 1. The decisions of the National Labor Relations Board (R. 375–412, 527–564) are reported in 1 N. L. R. B. 411, 432 (1936).

JURISDICTION

The decrees of the United States Circuit Court of Appeals for the Second Circuit were entered July 20, 1936 (R. 576–577). The petition for

writs of certiorari was filed September 30, 1936, and was granted November 9, 1936. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act, as applied to this respondent, is a valid exercise by Congress of its power to regulate commerce among the States.

2. Whether the provisions of Section 8, subdivisions (1), (3) and (4) of the National Labor Relations Act, as applied to this respondent, are consistent with the Fifth Amendment.

3. Whether the provisions of the National Labor Relations Act, as here applied, deprive respondent of the right of trial by jury guaranteed in the Seventh Amendment.

4. Whether the provisions of the National Labor Relations Act, as here applied, deprive respondent of the right of free speech guaranteed by the First Amendment.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat 449; U. S. C., Sup. I, Title 29, Sec. 151 *et seq.*) is set out as an Appendix to the Board's brief in No. 365, *The Associated Press* v. *National Labor Relations Board,* and is summarized at pp. 3–8 of that brief.

STATEMENT

On September 28, 1935 and November 11, 1935, written charges against the Friedman-Harry Marks Clothing Co., respondent here, were filed with the Regional Director of the Fifth Region of the National Labor Relations Board pursuant to Section 10 (b) of the Act and Article II, Section 2 of the Board's Rules and Regulations. The charges alleged that respondent had engaged in and was continuing to engage in, certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act (R. 11–14, 424–425). Each charge was filed by the Amalgamated Clothing Workers of America, a labor organization (R. 399, 407; 191).

On October 26, 1935, and November 19, 1935, the Regional Director for the Fifth Region issued complaints on the respective charges pursuant to Section 10 (b) of the Act and Article II, Section 5 of the Regulations. These complaints alleged unfair labor practices affecting commeree within the meaning of subdivisions (1), (3) and (4) of Section 8, and subdivisions (6) and (7) of Section 2 (R. 15–23, 426–430). Respondent filed in each case a special appearance objecting to the jurisdiction of the Board on the grounds that the Act, as applied to it, violated Articles I and III of the Constitution and the First, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Thirteenth Amendments (R. 25–29, 431–436). Subject to and reserving its

rights under the objection to the jurisdiction of the Board, respondent also filed in each case an answer denying the allegations of violation of the Act (R. 30–32, 437–439).

Both parties agreed at preliminary hearings in No. 422, the first of the two cases, that evidence might be introduced in the form of affidavits or statements to stand uncontradicted by respondent (R. 33–65). A hearing was held in both cases on December 5, 1935, before Henry G. Perring, the trial examiner designated by the Board (R. 24). At that hearing respondent voluntarily waived its right to present testimony or to cross-examine (R. 68), stipulating that the evidence on behalf of the Board might be introduced in the form of affidavits to stand uncontradicted (R. 71–74). Most of the affidavits and exhibits in No. 422 were also introduced in No. 423 (R. 450–452), in addition to oral testimony dealing with the unfair labor practices charged in the second complaint. Thus the evidence in both cases is chiefly in the form of written statements, in large part under oath, and was not objected to by respondent except, in certain instances, as to materiality, relevance or competence.

Thereafter the matter came before the Board pursuant to intermediate reports of the trial examiner, who found that respondent had engaged in unfair labor practices and recommended that an order issue requiring it to cease and desist there-

from (R. 378–379, 530). On March 28, 1936, the Board handed down its decisions setting forth its findings of fact (R. 379–409, 530–562) and the orders here in question (R. 409–412, 562–564). These findings of fact, which are identical in all respects except as to the specific unfair labor practices complained of in each case, may be summarized as follows:[1]

The nature of respondent's business.—Respondent is a Virginia corporation engaged in the sale and distribution of men's clothing, with its principal office and plant at Richmond, Virginia (R. 396; 15, 31). It is a large enterprise; its volume of business having grown from $800,000 in 1933 to $1,750,000 in the first ten months of 1935 (R. 399; 96), and its employees having increased during the same period from 550 to 800 (R. 398; 96).

The principal materials used by respondent in the manufacture of its finished products are woolen and worsted goods, over 99 per cent of which come from States other than Virginia. These materials are fabricated mainly in Massachusetts (50 per cent), Connecticut (10 per cent), Rhode Island (8 per cent), New York (8 per cent), New Jersey (5 per cent) and Pennsylvania (4 per cent). Purchases of 75 per cent of these materials are made

[1] Where the findings are identical a reference will be given only to the finding in the first case. The references in the parentheses preceding the semi-colon are to the findings; the references following the semi-colon are to the supporting testimony and evidence.

pursuant to contracts made in New York City. Immediately after purchase, the goods are shipped to New York City for sponging, and are then forwarded to the Richmond plant. (R. 397–398.) Other materials, such as linings, thread and sewing materials are also purchased and shipped to the Richmond plant almost exclusively from States other than Virginia (R. 397–398; 77–80).

Over 80 per cent of all finished garments made at the Virginia plant are sold and shipped to customers located outside the State of Virginia, chiefly department and men's clothing stores. To facilitate sales, respondent maintains a sales office and show room in New York City where 15 to 20 per cent of all of its sales are made. It also employs eight traveling salesmen who operate in many States, and advertises in certain trade publications. It has a registered trade mark, "Rockingham", for use in interstate commerce (R. 398–399; 90–92, 95).

Respondent's operations reflect those of the industry as a whole.[2] Thus, in 1929 the five New England States of Maine, Vermont, Massachusetts, Rhode Island and Connecticut, from which

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[2] The men's clothing industry is among the 20 most important industries of the nation. In 1929 it was sixteenth in number of wage-earners, nineteenth in value of product, and sixteenth in amount of wages paid. In 1935 it included more than 3,000 firms, directly employing approximately 150,000 workers. The total value of sales of products of the industry in 1929 was $833,242,000. (R. 379; 113–115, 120.)

respondent obtains 68 per cent of its woolen and worsted goods, produced approximately 65 per cent of all men's wear fabrics[3] (R. 383, 397; 136–138). Yet all five of these States produced, in 1929, less than 4 per cent of the men's clothing produced in the United States (R. 383; 138). The principal areas from which other essential materials are obtained, such as rayon and cotton fabrics, silesia for pockets, felt, haircloth, and jute and hemp fabrics, likewise fail to coincide with those States which lead in the fabrication of men's clothing (R. 381–382; 139–143).

Again, like respondent, many enterprises have their men's wear fabrics sponged and shrunk at independent sponging plants centered in New York City and Philadelphia. These operations are there performed upon the cloth while en route from mill to purchaser. (R. 382, 398; 116, 196.)

Interstate movements likewise occur in the course of the actual fabrication of finished garments. While the fabrics are ordinarily cut to shape and size by the purchaser of the cloth, the processes of actual fabrication of the garment—sewing, assembling shoulder pads and canvasses, finishing and pressing—are frequently performed

[3] "Men's wear fabrics" is the term employed in the industry and by the Census of Manufacturers to describe woolen and worsted cloth manufactured for and used by the men's clothing industry. These materials represent 75 per cent of the total cost of the industry's raw materials (R. 380–381; 115, 131, 196).

by independent contractors (R. 383, 384; 117, 121–128, 197–198, 205). It is estimated that about 75 per cent of the output in the New York City area, the principal production center, is fabricated by contractors (R. 382; 197, 264). In no State is the proportion of garments cut the same as the proportion of total man-hours worked (R. 121–128). New Jersey is a striking example of this phenomenon, no doubt because of its proximity to the New York City center (R. 383; 128). Tables in the record describe these variations in detail (R. 121–128).

Distribution of the industry's products extends to every State. (R. 384–385; 148–152, 155–156, 159–160). Over 63 per cent of all sales in the industry are made directly to retailers (R. 385; 145). Many of the leading manufacturers own or are financially interested in retail outlets (R. 385; 158–159, 198–199, 235–243). The explanation for such wide distribution from a restricted fabrication area is found in the fact that transportation costs are a negligible factor in the ultimate price (R. 388; 155, 164–165). Ten cents will more than pay the cost of transporting a suit by fast freight from New York to St. Louis, and the even faster facilities of the parcel post may be utilized, at a cost of only 59 cents, to send a suit from New York across the continent to Los Angeles (R. 164).

Sales to distributors are accomplished chiefly by the two methods utilized by respondent, i. e.,

through the medium of salesmen who travel from State to State, and through the maintenance of show rooms in New York City and other cities for the exhibition and sale of stocks to prospective buyers appearing from all sections of the country (R. 386; 146–148). New York City is the great market place of the industry, and there show rooms and stocks are maintained by most of the industry's substantial firms (R. 386; 198, 232–234). In turn, large purchasers have permanent buying offices there (R. 386; 147). Other cities, such as Chicago and Los Angeles, provide similar although less extensive facilities (R. 386; 147–148). A substantial proportion of the business of the industry is done on a special order basis (R. 146–147). In such a nation-wide distributive system, advertising, frequently of nation-wide character, is a prominent factor, and there is an equally common resort to the use of trade marks (R. 387; 152–153, 199–200).

The unfair labor practices.—In the summer of 1935 the respondent's employees attempted to form a local of the Amalgamated Clothing Workers of America, a labor organization within the meaning of Section 2, subdivision (5) of the Act (R. 399; 191). Meetings were regularly held and memberships actively solicited by interested employees. (R. 399, 400, 402–405, 554–558; 336, 339, 342, 344, 346, 351, 352, 460, 467, 482, 513). Respondent's officials immediately showed great hostility to the

organization (R. 329, 333, 399–400, 514); threatened employees with discharge if they joined the union or attended union meetings (R. 400–401; 366, 475–476, 513); and maintained surveillance over union meetings in various ways (R. 401, 333, 342, 346, 515–516). On June 28, 1935, three employees were discharged for attending a union meeting as an example of what would happen to the rest (R. 400–401; 329, 333). On August 1, 1935, certain employees circulated in the plant, during working hours, a petition expressing loyalty to the company, satisfaction with working conditions, and resentment at union organizers. Failure to sign was regarded as signifying either approval of the union or membership in it. Supervisors assisted in securing signatures, some of which were obtained by threats. (R. 401; 346, 348, 514, 467, 481.) After its circulation the petition was delivered to respondent's president (R. 372).

In the period July to November, 1935, the respondent discharged or laid off the twenty-six employees named in the complaints. Nineteen of these, the Board found, were discriminated against because of their union affiliations. All were union members and most of them had been active in organization work (R. 402–405, 554–558). Many had refused to sign the "loyalty" petition (R. 402–405, 554–558; 336–337, 339, 343–344, 346, 352, 469, 481–482, 487–488); others had signed only after strong persuasion or threats (R. 401; 514, 365).

In eleven of the discharges, respondent's discriminatory motive was clearly expressed, in some instances at the time of discharge (Brock, R. 402, 337–338; Morgan, R. 557–558, 474; Kenny, R. 558, 475–476; Annie Mae Rogers, R. 554, 496), and in other instances at a subsequent meeting of the discharged employees called by the management (R. 558; 490–491, 499–501, 506, 510, 521, 524). Flimsy pretexts, some accompanied by thinly-disguised references to union activity or failure to sign the "loyalty" petition, were utilized in other cases (R. Koch, R. 402, 340; Williams, R. 403, 344; Holder, R. 404, 353; McAden, R. 404, 349; High, R. 556–557, 461–462; D. Koch, R. 557, 524). The clear implications of this testimony were in no way refuted by respondent, who offered no evidence whatever.

Effect of unfair labor practices upon interstate commerce.—Respondent's president stated on September 26, 1935, that the strife created by the controversies here involved had so curtailed respondent's operations that, while it had fabricated 84,000 units in the Spring of 1935, its output in the Fall of that year would not exceed 60,000. He stated further that a fear on the part of one customer in a Western State that respondent could not make delivery because of this dispute, had led to the customer's refusal to give respondent an order for 30,000 units (R. 406–407; 371–372).

Upon the basis of these findings, the Board concluded that respondent, by discharging seven em-

ployees and laying off two in No. 422, and by discharging eleven employees involved in No. 423,[4] had engaged in unfair labor practices within the meaning of subsections (1) and (3) of Section 8 of the Act (R. 409, 562). The Board also found that one of the employees in No. 422 had been discharged because she had participated in filing a charge with the Board, and that respondent had thereby engaged in an unfair labor practice within the meaning of subsection (4) of Section 8 of the Act (R. 409). The Board also concluded that respondent's activities were unfair labor practices affecting commerce within the meaning of subsections (6) and (7) of Section 2 of the Act, in that they tended to lead to labor disputes burdening and obstructing commerce or the free flow thereof (R. 409, 562).

The Board therefore issued an order in each case (R. 409–412, 562–564) requiring respondent to cease and desist from discharges, threats of discharge, and other acts of interference with its employees in the exercise of their rights to self-organization and otherwise as guaranteed in Section 7 of the Act; to offer full reinstatement with back pay to the employees found to have been laid off or discharged in violation of the Act; and to

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[4] One employee, Doris Koch, was named in both complaints, in No. 422 by reason of lay-off, and in No. 423 by reason of discharge (R. 20, 428). Discrimination was found in each case, but reinstatement ordered only in No. 423 (R. 405, 557, 563).

post appropriate notices. The complaint was ordered dismissed for lack of evidence as to certain employees and certain allegations (R. 411–412, 564).

On March 28, 1936, the Board filed in the court below its petitions for the enforcement of the orders it had entered (R. 1–7, 413–419), and filed amendments to the petitions on May 8, 1936 (R. 571–575). The two petitions were consolidated by leave of court (R. 565–567). On July 20, 1936, the court below entered its decrees denying the petitions for enforcement (R. 577).

ARGUMENT

We have shown, in the brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* that the provisions of the National Labor Relations Act there, and here, involved are a valid exercise of the power of Congress to protect interstate commerce from burdens and injuries, and that they were properly applied, in that case, to an employer engaged in interstate commerce, with respect to his employees who were in, or intimately associated with, that commerce. We have also shown, in that brief, that the provisions of the Act there, and here, involved, do not conflict with the Fifth, Seventh or First Amendments. Finally, we have shown in that brief that the provisions involved in the present cases are separable from

other provisions which have not been invoked, particularly Sections 8 (5) and 9. Accordingly, we respectfully refer the Court to the brief in that case for the discussion of those questions.[5]

Moreover, in the brief for the Board in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* we have set out in detail the power of Congress to control, and consequently to prevent through this Act, industrial strife in the producing or manufacturing divisions of an enterprise largely engaged in and dependent upon the free flow of interstate commerce. Rather than repeat the arguments there advanced in the present brief, we shall only state briefly the legal principles involved, and shall then indicate their application to this respondent, a large enterprise which occu-

[5] In No. 422 the Board found that respondent, by discharging Sara Sheffield because she filed charges under the Act, had engaged in unfair labor practices within the meaning of subsection (4) of Section 8 (R. 409). Sara Sheffield was also found to have been discharged in violation of subsections (1) and (3) of Section 8 (R. 408–409).

Subsection (4) of Section 8 is involved only in this one case, and here only as an alternative basis for the order of the Board. The subsection merely accords to persons filing charges and giving testimony in Board proceedings the protection against influence and intimidation accorded witnesses in judicial proceedings in the Federal courts by Sections 135 and 136 of the Criminal Code (U. S. C., Title 18, Secs. 241, 242). If subsections (1) and (3) of Section 8 are valid, there can be no question of the validity of subsection (4).

pies a prominent place in the manufacture and distribution in interstate commerce of men's clothing.*

THE NATIONAL LABOR RELATIONS ACT, AS HERE APPLIED TO THIS RESPONDENT, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE.

The National Labor Relations Act is an exercise of the power of Congress to protect interstate commerce from injuries caused by industrial strife. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548. Experience has shown this strife to be a burden upon commerce not only in its totality, but also because in many individual instances strife eventuated in conspiracies to affect commerce, or otherwise imposed direct and substantial burdens upon it.

Congress, in dealing with the evil of industrial strife, might have approached the problem by a statute designed to remove the burden on interstate commerce after it had evidenced itself in a particu-

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* On the merits of these cases, the Board made detailed findings (R. 399–409, 551–562) with respect to the unfair labor practices engaged in by respondent and concluded that it had discharged a total of eighteen and laid off two employees under circumstances which constituted violations of Section 8, subsections (1), (3) and (4) of the Act. Respondent offered no evidence of any kind. The Act provides that the Board's findings as to the facts, if supported by evidence, shall be conclusive (Section 10 (e)). The evidence clearly supports the findings (*supra* pp. 9–11), and respondent is therefore not in a position to overthrow them. *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Company*, 291 U. S. 67, 73.

lar case, or it might have enacted a statute designed to eliminate the causes of the burdens in anticipation of their probable effect. The National Labor Relations Act follows the second alternative.[7]

The Act does not, however, attempt to eliminate the causes of industrial strife in *all* enterprises.

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[7] The record in the present case presents much proof of the reasonableness of the means employed by this Act in eliminating the burdens on interstate commerce arising out of industrial strife. See brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board*, at pp. 45–69. In the period from 1910 to the present time the industry has been characterized by the gradual acceptance of the procedure of collective bargaining. The Chicago area, for example, suffered from constant labor controversies; only one firm, that of Hart Schaffner and Marx, which had entered into a collective bargaining agreement in 1911 (R. 299) which has been continued to the present time (R. 219, 292, 301) escaped strikes and lockouts (R. 282–286, 291–296, 297–302). However, in 1919 the remainder of the industry in that area entered into an agreement recognizing the rights of organization and collective bargaining similar to the existing agreement with Hart Schaffner and Marx. As a result, the burdens upon commerce resulting from industrial strife have been eliminated in that area (R. 285, 293–296, 301–302).

The New York City area presents a similar history of strikes and lockouts (See Perlman and Taft, *History of Labor in the United States, 1896–1932* (1935 ed.), pp. 315, 435–436, 500–501; R. 309–319). In 1924, however, an agreement similar to that of the Chicago area was adopted (R. 311), and industrial strife has been virtually eliminated (R. 259–260, 265, 285–286, 303, 311, 313, 316–320). Similar results have been obtained in Rochester, Boston, Cincinnati, Cleveland, Baltimore, Philadelphia, and St. Louis (R. 219–220, 267–269, 283–284, 301, 322).

The statute is specifically directed to the elimination of the practices prescribed by Section 8 only when they are found to be "affecting commerce" (Sec. 10 (a)). The phrase "affecting commerce" is defined in Section 2 (7) as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." These jurisdictional limitations, obviously patterned upon the decisions of this Court under the commerce clause, are manifestly a direction to the Board to exercise the national power within the limits permitted by the Constitution.

Thus the validity of any specific application of the preventive measures of this Act depends upon whether industrial strife resulting from the practices in the particular enterprise under consideration would be of the character which Federal power could control if it occurred. If strife in that enterprise could be controlled, certainly it could be prevented. *Stafford* v. *Wallace,* 258 U. S. 495, 525. In the Board's brief in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* at p. 39, we pointed out the three situations in which Congress may exercise its power to control burdens and obstructions on interstate commerce after they have arisen. We submit that in the application of the Act to respondent each of these three situations is presented. Of course,

the existence of any one of the three situations is sufficient to sustain the jurisdiction of the Board.

I

It is well settled that an industrial dispute involving an intent to restrain commerce is within the control power of Congress, even though arising out of local activity. *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Loewe* v. *Lawler*, 208 U. S. 274. Consequently, where the situation in a particular enterprise presents the likelihood that a labor dispute, if it occurred, would involve an intent to restrain commerce, then the Board can apply the preventive measures of this statute to that enterprise. It is not claimed in the present case that there is any proof of the existence of an actual intent to affect commerce. However, respondent's enterprise presents a situation in which a labor controversy over employee's basic rights of self-organization and freedom from interference in choice of representatives for purposes of collective bargaining would be likely to involve the purpose not merely by stopping production, but also by interrupting or hindering actual sales and shipments in interstate commerce.

Over 125,000 employees in the men's clothing industry are members of the Amalgamated Cloth-

ing Workers of America, the largest collective bargaining agency in the industry (R. 191, 193). Acting through that labor organization as their representative for collective bargaining purposes, those employees have secured collective agreements which cover the greater part of the industry (R. 219–220). By those agreements, wages have been increased, hours shortened, and other ameliorating standards of employment obtained and maintained (R. 218–220, 206). By them, also, the processes of negotiation and arbitration have been substituted for the strike and lock-out as a peaceful method of solving industrial problems affecting employer and employee. See p. 16, *supra*.

Employees who are members of this organization will not lightly yield to influences endangering the favorable conditions of employment now established and existing in the principal centers of the industry. See footnote 7, p. 16, *supra*. On the contrary, it is only reasonable to assume that they would endeavor effectively to counteract any such dangers. Dangers of the character suggested in fact exist today. They are found principally in a wide-spread movement of enterprises away from the areas in which collective bargaining prevails, with correspondingly high standards of employment, to areas where employees are unorganized and standards of employment are low. Thus there has been, in recent years, a steady decline in number of employees, establishments and production

in New York City, Rochester, Chicago, Baltimore, and Philadelphia—the organized, high-wage and most important centers of the industry—and a corresponding increase in other and unorganized areas (R. 166–67, 171). The chief incentive for this migration unquestionably is the search for lower wages (R. 165–173), for labor cost constitutes 40 per cent of the value added by manufacture (R. 169, 207), and other principal costs are relatively inflexible (R. 162, 169). When viewed in the light of the fact that distance is no obstacle to competition in the industry's main markets, the direct effect of this migration upon the organized areas is plainly evident.

With effective competition between the industry's enterprises an accepted fact regardless of location, and bearing in mind the purpose and effect of the migration of enterprises just discussed, it seems unavoidable that the members of the Amalgamated Clothing Workers should, as they do, regard the industry as one whose economic organization is not based on the interests of each individual enterprise, but is one in which union conditions, to be maintained at all, must prevail generally (R. 192). Industrial strife in respondent's enterprise would, therefore, be likely to have as its object, not merely the application of economic pressure upon respondent, but the cessation of shipments from respondent's plant into the national market, in order to safeguard the organization and

collective bargaining rights in competing enterprises and areas beyond the State of Virginia. *Cf. Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310.

We are not here contending that the circumstances described above establish a valid basis for wage stabilization legislation under the commerce clause. We do contend that such circumstances give rise to a reasonable probability of industrial strife involving the purpose to restrain actual sales and shipments in the channels of interstate commerce, and that they do establish a valid basis for a statute such as this, dealing solely with the problem of labor disputes as they affect the national interest.

We submit, therefore, that there is a reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, be likely to involve an intent to affect interstate commerce. Accordingly, the Board was justified in holding that the preventive measures of the National Labor Relations Act should be invoked against respondent in order to anticipate that industrial strife which would be within the control power of Congress.

II

This Court has recognized that Congress may exercise control over some industrial disputes even where intent cannot be or is not proven. *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 410–411; *Industrial Association* v. *United States,*

268 U. S. 64, 81; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, 471. *Cf. United States* v. *Patten*, 226 U. S. 525. The opinions of the Court do not clearly define this category of industrial strife with the necessary effect of substantially burdening interstate commerce. However, in the brief in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, at p. 51, we have suggested three possible constructions which might be adopted: (1) Industrial strife has the necessary effect of burdening or obstructing interstate commerce when it occurs in an enterprise lying within a well-defined "stream" or "flow" of commerce; (2) industrial strife is of that type when its effect would be to restrain a substantial proportion of all the commerce in the particular commodity; or (3) industrial strife is of that type when its effect would be to prevent interstate sales or shipments of a substantial volume of goods which would otherwise move in interstate commerce. We submit that industrial strife in respondent's enterprise would fall within each of these constructions.

It is true that respondent's enterprise is not so clearly within a stream of interstate commerce as that of the Jones & Laughlin Steel Corporation, respondent in No. 419. Nevertheless, we submit that respondent's enterprise may be considered as an integral part of a stream of commerce among the States.

This stream or flow of commerce begins with the movement of the raw wool from the West to the New England States (R. 381). Five States in that area weave over 65 per cent of the principal material for the clothing industry—woolen and worsted cloth (R. 380, 383). Yet the flow does not stop there. Only one of these five New England States is among the eight in which are located 95 per cent of the establishments of the industry, and even that State, Massachusetts, has but 3.6 per cent of the enterprises (R. 383). Most of the cloth moves on in interstate commerce to the centers of the industry such as New York (50.2 per cent of the enterprises), Pennsylvania (10.4 per cent), and Maryland (10.2 per cent) (R. 382–383). This preponderantly interstate movement takes on an added significance from the fact that more than one-third of all woolen woven cloth is made for the men's clothing industry; indeed, it is commonly made to order (R. 115–116, 135, 196).

In many cases the flow of woolens and worsteds passes through an operation intermediate to the weaving and the fabrication of the clothing—the sponging and shrinking. If the clothing manufacturer does not perform this operation at his own plant, his cloth commonly goes from the mill to a Philadelphia or New York sponging plant, and is there reshipped to him (R. 382).

This interstate flow of goods from mill to manufacturer is likewise true to a substantial extent of

many other materials essential to clothing, such as rayon fabrics for lining, silesia for pockets, felt, haircloth and cotton, jute and hemp fabrics (R. 139–143).

Large interstate movements occur even during the actual fabrication of the garments. The purchaser of the cloth commonly cuts the fabric to shape and size, but the actual sewing, finishing and pressing are frequently done in other States. See pp. 7–8, *supra.*

The interstate movement in the distribution of products is, of course, a matter of common knowledge. Seven States account for 90 per cent of the total production of mens' clothing (R. 122) and only 48 per cent of the sales to consumers (R. 122, 150–152, 157). Indeed 21 States produced no industry products whatever, but consumed 12 per cent of the total, valued at over $130,000,000 (R. 156). The explanation for the wide distribution lies in the fact that transportation costs are but a negligible factor in the ultimate price; ten cents will pay fast freight on a suit from New York to St. Louis, and even parcel post costs only fifty-nine cents per suit from New York to Los Angeles (R. 164).

These general characteristics of the industry are, as the statement shows (*supra,* pp. 5–9) characteristic of respondent. Its cloth comes from the New England States, is purchased in New York, stops at a sponging and shrinking plant in that city, and

then arrives at respondent's plant in Virginia. All other materials used in men's clothing (see pp. 7, 24, *supra*), are brought to the plant from points outside Virginia. Respondent does not have contracting work performed for it elsewhere, but its distribution system, consisting of salesmen, a New York City showroom, and national advertising, reaches a national market (R. 91–92). We submit, therefore, that industrial strife in respondent's plant would have the necessary effect of burdening and obstructing commerce within the first construction suggested above (p. 22, *supra*), and is therefore within the control power of Congress. *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Tagg Bros. & Moorhead* v. *United States*, 280 U .S. 420.

If, however, the second suggested definition of industrial strife with the necessary effect of burdening and obstructing interstate commerce be adopted—*i. e.*, strife which has the effect of preventing or disrupting a substantial proportion of all the interstate commerce in a particular commodity, we submit that strife in respondent's plant would be included. Respondent alone, it is true, does not occupy such a position, although it is among the fifty largest enterprises in the industry (R. 120, 212). However, industrial strife in the men's clothing industry, as the record shows, may be expected to spread to other enterprises (R. 267–269, 283–284, 293, 301–302, 309–310; see also

Perlman & Taft, *History of Labor in the United States,* 1896–1932 (1935 ed.) pp. 304–307, 315–316, 435–436, 500). The strong national unions, and the keen competition between the organized and unorganized areas (see pp. 18–21, *supra*) increase the likelihood that strikes will spread to other enterprises and areas, particularly if they have as their basic causes the refusal of employers to allow organization of their employees for collective bargaining and other purposes. Consequently, the Board was justified in applying the preventive measures of the Act to respondent in order to remove the causes of industrial strife which would be apt to spread, by sympathetic action, until a substantial part of all the commerce in men's clothing had been restrained. *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344; *Industrial Association* v. *United States,* 268 U. S. 64; *International Organization* v. *Red Jacket C. C. & C. Co.,* 18 F. (2d) 839 (C. C. A. 4th), certiorari denied, 275 U. S. 536.

Inasmuch as we believe that industrial strife within respondent's plant would have the necessary effect of burdening or interrupting interstate commerce within either construction (1) or (2) *supra,* p. 22, we do not consider it necessary to pass upon the third construction suggested—*i. e.,* that industrial strife has the necessary effect of burdening or obstructing interstate commerce if its effect would be to prevent interstate sales or ship-

ments of a substantial volume of goods which would otherwise move in interstate commerce. However, in the event that the Court believes that the facts with respect to respondents' enterprise do not warrant the application of constructions (1) or (2), we discuss construction (3).

Respondent is, compared to the size of other firms in the clothing industry, of relatively large size, being among the fifty largest of the three thousand firms which make up the industry (R. 120, 212). Its sales during the first ten months of 1935 totalled $1,750,000, involving 150,000 units of clothing (R. 95–96). Industrial strife would thus cause the cessation of this large volume of interstate commerce even if confined to respondent's enterprise, which, as we have shown above (*supra*, p. 25), would be unlikely. Even if it were so limited, however, it seems impossible to believe that Congress is powerless to prevent a burden on commerce of that magnitude. As we have shown in the brief for the Board in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, at pp. 77–85, the effect of industrial strife on interstate commerce, even though arising out of local activity, is immediate and would be substantial here. And certainly the cessation of purchases and shipments by an enterprise of the size of respondent's cannot be regarded as without national significance. Nor can the fact that other units of the industry could probably increase production suf-

ficiently to supply the deficiency caused by respondent be determinative of the power of Congress, for the disruption of the channels of commerce, even with no change in the amount of material shipped, is in itself a burden on interstate commerce within the constitutional concern of Congress. *Addyston Pipe & Steel Corp.* v. *United States,* 175 U. S. 211, 243–245; *McCall* v. *California,* 136 U. S. 104, 111.

III

There remains one further ground upon which the order of the Board in the present case may be supported. This Court has on many occasions enunciated the principle that where Congress, after investigation, directs its legislation to the prevention of certain activities which even though usually only of local concern, recur with such frequency as to constitute an undue burden on commerce, those activities may be subjected to the control power of Congress. *Stafford* v. *Wallace,* 258 U. S. 495, 520–521; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 40; *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 469. See also *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

We have already described, in the briefs for the Board in Nos. 365 and 419, the recurring and widespread character of the burden on interstate commerce resulting from industrial strife in enterprises which receive a substantial part of their ma-

terials from, and send a substantial amount of their products in interstate commerce.[8] We have also described there the close and substantial relationship which industrial strife in such enterprises bears to interstate commerce, the efforts of the Federal government, by various devices, to mitigate it, and the studies made over a long period of years which eventuated in this Act, the basic principles of which have already been sustained by this Court in their application to the prevention of industrial disputes affecting the railroads. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

If, as we contend, the control power of Congress extends to recurrent industrial strife in these interstate enterprises, there can be no doubt that the order of the Board in the present case was within its jurisdiction. Respondent is dependent upon the products of States other than Virginia for almost 100 percent of the woolen and worsted goods which it uses (R. 77–78). The same condition prevails with respect to cotton, rayon and silk linings, felt, wigan and cotton tape, Hymo and under-collar

[8] Industrial strife in the men's clothing industry has frequently paralyzed the commerce in men's clothes in whole sections of the country. Such was the effect of each of the three general strikes in the New York area—in 1918, 1920–1921 and 1924—and of the general strike in the Chicago area in 1910–1911. R. 309–310; Perlman and Taft, *History of Labor in the United States*, 1896–1932 (1935 ed.) pp. 304–307, 435–436, 500–501.

cloth (R. 75–80). It can fairly be said that the contribution of Virginia enterprises to the operations conducted at respondent's plant is negligible.

Nor is respondent's market a local one. Over 82 percent of all its sales are made to purchasers located in States other than Virginia, the principal ones being such widely-separated States as Texas, North Carolina, New York, Illinois, Tennessee and Louisiana (R. 91). From 15 to 20 percent of all of its sales are made through the medium of its New York office and sales room (R. 91–92).

We submit, therefore, that industrial strife in respondent's enterprise is of the character which, by its recurrence, comes within the control of Congress under the principle stated above. Consequently, the Board was justified in holding that the preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife affecting commerce which would be within the control power of Congress.

CONCLUSION

Wherefore, the decrees of the court below should be reversed, and the causes remanded with instruc-

tions to grant the petitions of the Board for the enforcement of its orders.

Respectfully submitted.

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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 422

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.,
Respondent.

No. 423

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Petitioner,

vs.

FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.,
Respondent.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR RESPONDENT

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Supreme Court of the United States

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Respondent.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR RESPONDENT

(Cases Nos. 422 and 423 are consolidated for the purposes of argument and brief.)

Statement

These cases arise under Petitions of the National Labor Relations Board for writs of certiorari filed in this Court September 30, 1936. They followed the denial by a unani-

mous Court of petitions of said Board filed in the Circuit Court of Appeals for the Second Circuit under the provisions of Section 10 (e) of the National Labor Relations Act, against the Respondent, Friedman-Harry Marks Clothing Co., Inc., for the enforcement of the Board's Decisions and Orders of March 28, 1936, in which Respondent was found guilty of violating Section 8, subdivisions (1), (3) and (4) of the National Labor Relations Act, (Public 198—74th Congress), approved July 15, 1935.

Opinion Below

The per curiam opinion of the Circuit Court of Appeals for the Second Circuit is reported in 83 Fed. Rep. (2nd) 731, and appears in the Record at page 575.

The Parties:

The National Labor Relations Board was appointed by the President of the United States on August 24, 1935, pursuant to the provisions of Section 3 (a) of the National Labor Relations Act (Public 198—74th Congress), approved July 15, 1935.

The Friedman-Harry Marks Clothing Co., Inc., is a Virginia corporation, organized, existing and transacting its business of manufacturing men's clothing under the laws of the State of Virginia, with its one factory and place of business in the city of Richmond, Virginia.

Nature of the Cases:

These cases, both of which present the same factual and legal questions, arose as the result of the filing of charges by the Amalgamated Clothing Workers of America, a Labor Union of workers in the men's clothing industry, with the Petitioner, National Labor Relations Board, in which it

was alleged that the Respondent, Friedman-Harry Marks Clothing Co., Inc., had violated the National Labor Relations Act by discharging from its employ, and discriminating against, twenty-nine out of its eight hundred manufacturing employees, because they had engaged in union activities (R. 11, 424).

As a result of the filing of these charges, the National Labor Relations Board issued two Complaints against this Respondent, one on October 26, 1935, and the other on November 15, 1935. These Complaints charged that Respondent is a Virginia corporation, "engaged at a place of business in the City of Richmond, State of Virginia • • • in the production, sale and distribution of men's clothing" (R. 16).

The Board also charged that the raw materials from which this men's clothing is manufactured are "transported in interstate commerce" to the plant of Respondent in Richmond, Virginia, and that after the raw materials are there converted and fabricated into men's clothing by Respondent, a large proportion of the finished product is "sold and transported in interstate commerce" to purchasers beyond the borders of the State of Virginia; all of which, the Board charged, constitutes "a continuous flow of commerce among the several States" (R. 16).

Proceedings of the National Labor Relations Board:

The Board filed its Complaints against Respondent on October 26 and November 15, 1935.

Respondent thereupon filed Special Appearances and Motions to Dismiss the Complaints, on the ground that the National Labor Relations Act is unconstitutional and in-

valid, and that the attempt to enforce said Act against this Respondent is illegal (R. 25-32). These objections and Motions, which were renewed at the opening of the hearings, were overruled by the Trial Examiner, to which action Respondent noted an exception.

Appearing specially, and expressly reserving its constitutional rights, Respondent also filed Answers to the Complaints, denying all of their allegations except that Respondent is a Virginia corporation engaged in the business of manufacturing men's clothing in Richmond.

In order to present these cases squarely to the Board and to the Courts on the question of the constitutionality of the Act, to expedite the Board's decision and to save time and expense, counsel for Respondent announced at the commencement of the hearings that he would not cross-examine any of the Board's witnesses and would not offer any countervailing evidence. Respondent also made available to the Board all the data and records respecting Respondent's business which the Board had demanded (R. 35).

Objections were made by counsel for Respondent to the admissibility and relevancy of a number of affidavits of so-called "experts" relating to trade unions and the men's clothing industry in general which were offered by Petitioner. This testimony was made up in large part of hearsay, opinions and arguments, concerned conditions in other clothing factories in other States and did not pretend to and in no wise concerned the operation and conduct of Respondent's business. The Trial Examiner and the Board admitted all of this testimony, to which action exceptions were noted (R. 96; 97; 100; 101; 175; 176; 330; 332; 334-5; 361; 366; 368-9; 448-9; 450-1; 452-3; 454; 457-8; 464-5; 478-9; 485; 492; 497; 498; 502; 507; 511; 522; 525).

Following the conclusion of the hearings on December 5, 1935, counsel for Respondent made repeated requests for a prompt decision from the Board. Despite these requests, the National Labor Relations Board did not hand down its decision in these cases until March 28, 1936, almost four months later, at which time it found Respondent guilty as charged, with respect to nineteen of these employes (R. 375; 527). Simultaneously with the rendition of the decisions, on March 28, 1936, the Board forwarded Petitions for the enforcement of its decisions to the United States Circuit Court of Appeals for the Second Circuit.

The United States Circuit Court of Appeals for the Second Circuit denied the petitions (R. 575).

The Facts of these Cases:

(a) as to Respondent's business (R. 75-96):

Respondent has been engaged in the business of manufacturing men's clothing in the City of Richmond, State of Virginia, since 1931, succeeding a similar business conducted for many years in the same place by most of the present stockholders of the Company. It owns and operates one manufacturing plant, employing approximately eight hundred people, all residents of the State of Virginia, and its offices are located in this plant.

The materials which Respondent uses in its business come from various parts of the United States. It designs, cuts, converts and fabricates raw materials, through approximately one hundred different operations, into men's clothing, the entire process of manufacture taking place within its factory in Richmond, Virginia. This clothing Respondent sells to retailers, 17.2% of the product being sold to retailers in the State of Virginia, and the balance in various States of the United States.

All orders for merchandise are received and accepted at Richmond, and all merchandise is sold f.o.b. Richmond, Virginia, and shipped pursuant to customers' orders.

The men's clothing manufactured by Respondent constitutes less than 1% of the men's clothing manufactured in the United States.

The alleged unfair labor practices complained of in this case, are shown by the evidence to have occurred during the course of the manufacture of Respondent's product in Richmond (R. 75-96; 328-374; 453-525).

(b) as to the alleged unfair labor practices:

In 1935, the Amalgamated Clothing Workers of America were attempting to organize the workers in Respondent's factory.

Petitioner contends that the evidence in this Record shows that Respondent violated the Act by (1) interfering with the attempted organization of its employes, (2) discriminating against nineteen employes because of their membership in a labor union, (3) discharging an employe because she filed charges, under the Act, against it.

At no time, either prior or subsequent to the filing of these complaints, has there been any disorder or industrial strife or any strike at or in connection with Respondent's factory, and at no time has there been any interference with or stoppage of the production or shipment of its merchandise.

There is absolutely no evidence in this Record that the alleged unfair labor practices in these cases in any way affected the manufacture, sale or distribution of the pro-

ducts of Respondent, or affected, burdened or obstructed the flow of these products into interstate commerce, or in any way affected, burdened or obstructed the flow of interstate commerce, or even tended to do so.

Decisions and Orders of National Labor Relations Board (R. 375; 527):

The Board found that Respondent was engaged in unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7), and Section 8, subdivisions (1), (3) and (4) of the National Labor Relations Act.

The Board thereupon ordered Respondent to cease and desist and to offer the discharged employes full reinstatement with back pay (R. 375; 527).

ARGUMENT

I.

THE ACT, BY REASON OF ITS CHARACTER AND SCOPE, IS UNCONSTITUTIONAL.

(THE REAL PURPOSE OF THIS ACT IS A SOCIAL AND ECONOMIC ONE, ACCOMPLISHED IN AN ARBITRARY, CAPRICIOUS AND DISCRIMINATORY MANNER THROUGH UNIONIZATION OF ALL INDUSTRY AND BUSINESS BY FIAT.

The necessity for and propriety of first ascertaining the real purposes of the Act.

In order to comprehensively test the validity and constitutionality of Congressional legislation of the character of the National Labor Relations Act, it is both necessary and proper to first consider the ultimate object of the legislation as well as the means by which it is sought to be accomplished.

It is necessary to examine such objectives to ascertain whether there is constitutional sanction for the power which Congress seeks to exercise, or whether it is attempting, under the guise of the exercise of a constitutional power, to wield the influence of the Federal Government over matters beyond the jurisdiction delegated to it.

And such an examination is proper because Congress has no right, no authority and no power to adopt legislation, however meritorious or beneficial, affecting a subject matter which is actually beyond the jurisdiction of the Federal Government, merely because Congress declares in the Act, itself, that its aim is to regulate some matter over which it does have constitutional power.

The validity of legislation depends upon the real substance of the subject matter it comprehends, rather than its form as expressed in a declaration of "Findings and Policy".

The Supreme Court of the United States has several times recently reaffirmed this established principle.

Railroad Retirement Board et al. v. *The Alton R. R. Co. et al.*, 295 U. S. 330, at pp. 363, 371, 374.

United States v. *Butler*, 297 U. S. 1.

United States v. *Constantine*, 296 U. S. 287 at p. 296.

St. Joseph Stock Yards Co. v. *United States et al.*, 298 U. S. 38 at pp. 51-52.

Carter et al. v. *Carter Coal Co. et al.*, 298 U. S. 238, at pp. 289-291.

(a) The real purposes of the National Labor Relations Act.

This Act was intended to assist union labor in its efforts to unionize all industry and business through the establishment of a national scheme of compulsory unilateral collective bargaining.

This and this alone was the purpose of the Act. All avowals and professions now urged in legal support of it are only attempts to justify and validate this objective. And this purpose is effectuated by imposing arbitrary and unreasonable restrictions upon all employers, rendering them impotent in their relations and dealings with their employes, and forcing nonunion employes into labor unions in order that they may secure or retain employment.

Regardless altogether of the merits or wisdom of such a purpose and plan, its constitutionality must be judged by whether or not it falls within the Federal legislative power and whether or not it bears a real and substantial relationship to the exercise of that power.

A reading of the Act, itself, immediately discloses that the purpose of Congress was not to regulate interstate commerce or business or workers engaged in interstate commerce. It is the plain intent of this statute that its terms and provisions are to be applied to—and the National Labor Relations Board and the Government are applying them to—all businesses, whether engaged in interstate commerce or not. Without laboring the point, this can be readily seen by a mere examination of the names of the concerns against whom complaints have been prosecuted and the types of businesses they conduct.

The references to interstate commerce, contained in the Act, were placed there only for the purpose

and with the hope that their mere inclusion would lend constitutional color and bona fides to the social and economic ends sought to be attained by Congress, and as a prop to uphold the validity of a Federal statute, which can be sustained upon no other grounds.

(b) The background of the Act.

The history and background of this legislation disclose the real motive for and intent of this act. It was proposed solely as a substitute for Section 7 (a) of the National Industrial Recovery Act. That statute was declared to be invalid in the case of *Schechter Corp.* v. *United States,* 295 U. S. 495, in which the Supreme Court said that for social and economic purposes Congress cannot regulate industry and business, or employer and employe relationships therein, merely because they could be said to indirectly affect the flow of interstate commerce.

No argument and no theory can be raised in support of the National Labor Relations Act which was not urged upon the Supreme Court by the Government in the Schechter case.

This Act, exactly as Section 7 (a) of the NIRA, had its inception, not in the needs of interstate commerce, but in the demands of labor unions. It is a matter of common knowledge that for years union labor had been proposing such legislation to Congress. And this Act was conceived in the desire of labor to secure the force of Government behind its efforts to unionize all private industry and was born of the endeavor by Congress to satisfy those demands.

As a matter of fact, prior to the decision in the *Schechter case,* the present Act was pending before Congress. At that time there was no doubt or question as to the purposes and objectives of Congress as expressed in this legislation.

According to the committee reports, they were:

> "The first objective of the Bill is to promote industrial peace."
>
> (Senate Rept. No. 573 74th Cong., 1st Sess., May 1, 1935; at p. 1).

> "The second major objective of the Bill is to encourage, by developing the procedure of collective bargaining, that equality of bargaining power which is a prerequisite to equality of opportunity and freedom of contract."
>
> (Supra, p. 3).

Even after this Court had spoken in unmistakable terms in the *Schechter* decision, when amendments were proposed in Congress affecting the form but not the substance of the Bill, the House Committee on Labor reported, with respect to the objectives of the legislation and the amendments—

> "The Committee amendment to this Section reformulates the declaration of policy in order to emphasize the intent of the Bill to promote industrial peace, and therefore to bring it more clearly outside of the ruling in the Schechter case."
>
> (House Rept. No. 1147; 74th Cong., 1st Sess., June 10, 1935; p. 9).

(c) The illusory "Findings and Policy" of Section 1 of the Act attempt to conceal the real objectives of the Act in a vain effort to justify their illegality.

In order to circumvent the decision of the Supreme Court in the *Schechter* case, a prefatory statement of purported findings and a declaration of governmental policy were included in this Act in an attempt to cure the notorious and

inherent defects which will always exist in legislation such as this, short of a Constitutional Amendment.

This prefatory veil of "Findings and Policy" was thereby constructed, behind which it was hoped to perform the magical trick of turning strictly social and economic legislation into the regulation of interstate commerce. But the veil is so transparent and the trick so obvious that the hands of the prestidigitators are not as quick as the public eye, much less the scrutiny of the Court, in disclosing the stratagem.

Once this veil (of eliminating the causes of certain substantial obstructions to the free flow of commerce) is removed, and even conceding that the Act was not designed solely to further the interests of national labor unions, the very best that can be said for it is that it is a federal scheme to maintain just relations between all employers and their employes and thereby to promote the general public interests.

In drafting the Bituminous Coal Conservation Act of 1935, popularly known as the Guffey Act, the same strategy was adopted. A "Preamble" of purported findings and policy of Congress prefaced the Act. This Court, in determining the validity of the statute, said that, according to the preamble, it was designed, through the removal of alleged obstructions to the free flow of commerce, "to protect the general public interest and health and comfort of the people" and to "maintain just relations between producers and employes and others."

With respect to these aims, this Court, in the case of *Carter* v. *Carter Coal Co. et al.*, supra, said (pp. 290-291):

> "These affirmations—and the further ones that the production and distribution of such coal 'directly af-

fect interstate commerce', because of which and of the waste of national coal resources and other circumstances, the regulation is necessary for the protection of such commerce—do not constitute an exertion of the *will* of Congress which is legislation, but a recital of considerations which in the *opinion* of that body existed and justified the expression of its will in the present act. Nevertheless, this preamble may not be disregarded. On the contrary, it is important, because it makes clear, except for the pure assumption that the conditions described 'directly' affect interstate commerce, that the powers which Congress undertook to exercise are not specific but of the most general character—namely, to protect the general public interest and health and comfort of the people, to conserve privately-owned coal, maintain just relations between producers and employees and others, and promote the general welfare, by controlling nation-wide production and distribution of coal. These, it may be conceded, are objects of great worth; but are they ends, the attainment of which has been committed by the Constitution to the federal government? This is a vital question; for nothing is more certain than that beneficient aims, however great or well directed, can never serve in lieu of constitutional power.

* * * * * *

"The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to purposes affecting the nation as a whole with which the states severally cannot deal or cannot adequately deal, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have never been accepted but always definitely rejected by this court."

(d) The avowed objectives of the Act, as expressed in its Title, are belied by the terms of the Act itself.

The Title of this Act states that it is "an Act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce". The Findings and the Policy

contained in Section 1 declare that it is the underlying theory of Congress that the denial by employers of the right of employes to organize, and the refusal by employers to collectively bargain, lead to strikes, which have "the intent or necessary effect of burdening or obstructing commerce", and that it is for the purpose of *eliminating strikes* and *other industrial strife* that the Act is passed.

Yet, by Section 13 of the Act, it is provided: "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

Not only, therefore, is the Title a misnomer, but the statement of the basic and underlying philosophy, and the constitutional justification for it, contained in the Title, are directly belied and nullified by Section 13. This section, instead of discouraging or outlawing strikes, preserves and maintains them in all their strength and vigor as a weapon in the hands of unions to enforce their demands against employers.

It is obvious and inescapable, then, that instead of attempting to diminish industrial strife and to regulate interstate commerce, the statute is designed purely, as stated in Section 1, to promote the interests of union labor, to enhance its bargaining power, to stabilize competitive wage rates and working conditions within and between industries and to prevent business depressions—all matters relating only to public welfare.

(c) The provisions of the Act adroitly attempt to broaden and enlarge its sphere to include all employes and all businesses.

The Title of the Act refers to "interstate and foreign commerce". Section 1, containing the findings and policy of Congress, refers to "commerce", which is defined, in

subsection 6 of Section 2 of the Act, to mean commerce among the States.

The provisions of the Act, however, reach out and attempt to broaden its influence so as to apply to *all* workers engaged in *all* industry, and to *all* businesses.

The term "employer" is defined in Section 2 of the Act so as to include anyone employing any labor, with the exception of the United States Government, a State or political subdivision thereof, or any person subject to the Railway Labor Act, *or any labor organization or its representative.* This definition, therefore, includes every employer except those specifically exempted, whether engaged in interstate commerce or not. It applies to the corner groceryman, the proprietor of a "hot dog" stand, the lawyer, the doctor, the butcher and the candlestick-maker.

The term "employe" is defined in Section 2 so as to include every person working for another, except those employed as agricultural laborers or in domestic service or by a parent or spouse. The Act, therefore, applies to the clerk in the confectionery store, the cook behind the "hot dog" stand, the stenographer in the law office, the doctor's nurse, the butcher's errand boy and the helper who pours the wax into the candlestick-maker's mould.

(It is certainly interesting to note, in passing, that the only three classes of employes exempted from the provisions of this Act are those in whose ranks union labor has been utterly unable to make any headway.)

By Sections 9 and 10, the Board is given jurisdiction over *any* person who engages in *any* unfair labor practice which may be said to "affect" commerce. The term "affect-

ing commerce" is defined in Section 2 to mean "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

With this sweeping definition of "affecting commerce", and with substantially all employers and employes being subject to the terms of the Act, what conceivable alleged labor dispute could there be which could not be construed to fall within the judicial purview of the National Labor Relations Board?

Far then from regulating labor disputes arising only in interstate commerce, as stated in the Title and Findings and Policy of the Act, the language and terms of the Act clearly show that it was intended and contemplated that it should apply directly to every employer, every employe and every labor relationship.

And the proof of this intention and that it is being carried out, even though disclaimed and denied by the Government in its Brief in this case, are found in the construction placed upon the Act by the National Labor Relations Board that any labor dispute in any business which imports some of its materials from without the State and sells some of its product to purchasers beyond the State occurs in the "stream of commerce", and, therefore, may affect interstate commerce.

Under this interpretation, the Act necessarily applies to every business, and to retailers even more so than to manufacturers, because the retailer receives his merchandise from without the State and sells it to purchasers beyond the borders of the State without in any wise

changing its character or taking it out of the "stream". In no reported case, *even since the decision in the Carter case,* has this Board held that the labor dispute in question did not "affect" commerce, or that the employer, regardless of the business in which he was engaged, and his employes, regardless of the nature of the work they performed, were not subject to the terms of the Act. (*Commerce Clearing House Labor Law Service,* Par. 15401-15602.)

(f) The Act is arbitrary and capricious.

The most significant feature of this entirely arbitrary and capricious Act is its utter failure to regulate in any way the practices or conduct of labor unions or to make them responsible, in any degree, for their acts or for the acts of their representatives. It is almost inconceivable that any governmental authority, if its purpose is to eliminate strife between any two classes of persons, should attempt to effectuate that end by wholly and completely restricting the activities of one class and leaving the other class absolutely unfettered, untrammeled and free to use whatever methods it sees fit in order to gain its ends.

All employers are completely hamstrung and rendered impotent and subservient to the domination of labor organizations by Sections 7, 8 and 9 of the Act. This Act goes further in assisting unionization and disarming employers than any previous legislation ever enacted in any country operating under a republican form of government.

If strikes and industrial strife create burdens and obstructions to interstate commerce, and it is really the intent of Congress that this Act shall eliminate them, then the only way to achieve that end is to place mutual obligations on both employer and employe.

This the Act does not do. It prohibits and effectively prevents the employer from in any way interfering with the complete organization of his plant by the union, and it requires him to recognize and bargain with that union as the representative of his employes with respect to every relationship between them.

On the other hand, it imposes absolutely no responsibility or obligation on the employes or on the union, permitting them, without bargaining as to wages or hours or conditions of employment at all, to create dissatisfaction and dissension, to destroy loyalty to the employer and that esprit de corps and morale so necessary to the successful conduct of any business or enterprise.

The Act leaves them free, without having made any demands whatsoever, and merely for the purpose of organization and forcing unionization, to call and carry on strikes, to "sit down" and illegally occupy and take over the employer's premises and property, to boycott his products, and even to carry on against him a "sympathetic strike" in aid of a union or a strike in some other place and in some entirely unrelated plant or industry.

And all of this may be done irrespective of whether or not the employer is entirely fair and innocent of any overt act and irrespective of whether there has ever been any controversy between the employer and his employes. Moreover, these measures may be exercised by the employes or the union while any complaint is pending before the National Labor Relations Board.

But this Act does not even stop there. It requires the employer to bargain to a conclusion, meeting the proposition of his employes or their union with one counter propo-

sition after another, the fairness of each of which the Board is authorized to determine. At the same time, however, it leaves the union free to refrain from bargaining, to adhere to its original demands, however unreasonable they may be, and free to discontinue bargaining at any time.

Finally, if an agreement is reached, while the employer is held strictly accountable for the carrying out of all its terms, the union or any employe may disavow the agreement with impunity at any time and neither can be compelled to work under its terms or be penalized by the Act.

Above all, however, it subjects the employer to the continuous threat of complaint and prosecution in every one of his relations with every one of his employes. Every time he hires, discharges, promotes, demotes or in anywise changes the status of any employe, or adopts some regulation for the conduct of his business, he must be prepared to justify and defend his position, and prove his innocence of an "unfair labor practice". Indeed, the Act veritably turns the various Circuit Courts of Appeals into police or magistrates' courts.

What reason could there be for the failure of Congress to place any limitation, restriction or obligation on labor, except that it submitted to the policy and the determination of labor to secure privilege and power under governmental sanction without itself accepting any obligations or responsibilities?

The National Labor Relations Act perpetuates this policy. Very astutely it gives to national labor unions, as such, every benefit which can flow from the Act, without at the same time placing one iota of responsibility upon them

for anything which they or their representatives may do. This is arbitrary and capricious legislation of the most glaring type and of the worst character. Above all, however, it illustrates that the Act was not designed to and does not bear any substantial relation to interstate commerce.

(g) The Act arbitrarily discriminates against non-union workers.

Not only are labor unions free from responsibility and regulation, under the terms of this Act, but workers who are not members of labor unions, and not desirous of joining labor unions, are deliberately discriminated against and placed at the mercy of the unions. The terms of the statute practically require every worker to join a labor union, or be bound by its agreements with his employer, or forfeit his job.

There is no person to whom and no place to which a worker may look for assistance if he objects to becoming a member of a union or objects to it making contracts for him. He cannot turn to his employer, because the employer is directly forbidden by Section 8 of the Act to take any steps whatsoever to help him. He can not turn to the Labor Relations Board, because the Act does not give it jurisdiction over any complaints against labor unions.

The non-union employe may be bludgeoned into joining a labor union. Subsection 3 of Section 8 of the Act makes it possible for the union and an employer to agree that the employer shall require, as a condition of the continuation of employment of his workers, or as a condition precedent to the employment of workers, that those workers must be members of the labor union. *So that, while Section 8 of the Act specifically prohibits an employer from discharging*

any employe because he is a member of a labor union, the same section gives him the right to discharge his employe if he refuses to become a member of a labor union.

Thus the Act fosters and gives statutory sanction to the "closed shop", traditionally the fundamental objective and prime demand of every union. Not only that, but this section of the Act places the bewildered and helpless employer at the mercy of rival unions, each of which may be demanding, on its own behalf, a closed shop, one being in the ascendancy one day and the other the next.

Section 9 of the Act provides that when a majority of employes are members of a labor organization, the employer must bargain collectively with it, and the terms of that bargain shall be binding upon non-union workers. The only recourse open to non-union workers is that found in subsection (a) of Section 9, that they "shall have the right at any time to present grievances to their employer". What a mockery this is!

(h) The Act discriminates in favor of a selected type of labor organization and arbitrarily outlaws all others.

If, as is claimed, collective bargaining by employes with their employers is a necessity in order to eliminate industrial strife, it certainly does not follow that collective bargaining when carried on by a national labor union is always salutary, but when carried on by a plant organization welcomed or countenanced by its employer, or by a workers' organization even encouraged by the employer, is always vicious. Yet, this is what the National Labor Relations Act holds, because it outlaws the latter labor organizations.

Sub-division 2 of Section 8 of the Act refers to *"any"* organization of workers, and makes it unlawful for an employer to contribute financial *"or other support"* to it.

Then, by sub-division 3 of Section 8, the employer is prohibited from contracting with such an organization of his workers. All company unions and local organizations of workers are thereby arbitrarily outlawed. This intolerant, bigoted and prejudiced attitude exemplified not only in the Act but by the decisions of the Board, is emphasized by the provisions contained in sub-division 2 of Section 8 and sub-division (a) of Section 9, which provide that the employer may *"confer"* with his individual employes and that they may "present grievances" to him, *"subject to rules and regulations made and published by the Board"*. In other words, the employer may talk to his employes about their work and they, on their part, may talk to him about it only at the times and under the conditions prescribed by the National Labor Relations Board.

Thus, this Act, which has for its ostensible purpose the promotion of industrial peace and good will between employer and employes, actually erects a barrier between their free intercourse and relations, attributes improper motives both to all employers and their workers not having union agreements, prevents even the possibility of mutual understanding of mutual problems, and forces them to deal with each other at arms' length.

The Act virtually holds, and the logic applied by the Board in its decisions is, that an organization of workers other than a national labor union in which an employer shows any interest or to which he lends even any moral support is, *ipso facto,* disqualified from representing its members in collective bargaining with the employer. And it holds that the employer is guilty of violating the Act, if, forsooth, he attends any of its social functions or meetings, indicates his approbation of their forming such an organization and his willingness to bargain with it, contributes ice

cream to its picnics or lemonade to its dances or follows any of the dictates of good business policy.

Certainly, it need not be argued that it is a fundamental principle of successful business management that the efficiency of employes is enhanced and labor turnover is decreased in ratio to the extent that an employer is able to inspire and hold the goodwill, loyalty, confidence and cooperation of his employes by his friendly association with and sympathetic attitude toward them and their interests. Every well managed business, which can afford it, maintains a personnel department for the very purpose not only of instructing its employes in their duties, but of aiding and assisting them individually and their "mutual benefit" and "employes aid" associations as well. Is it only by encouraging the affiliation of his workers with a national labor union that an employer can succeed in removing all suspicion of his motives in his dealings with his employes?

It must be obvious that no considerations of general public welfare or industrial peace, much less the regulation of interstate commerce, dictated this arbitrary legal distinction between company unions and national labor unions, but that the outlawing of company unions was inserted in this Act solely at the behest of the national labor unions, which sought by statutory enactment to destroy all organizations of workers in industry which it did not or could not control.

(i) The administrative procedure outlined in the Act, and the procedure adopted by the Board in its administration of the Act, demonstrate its discriminatory, arbitrary, unreasonable and unlawful character.

From the very moment that the administrative wheels of this mill begin to turn, up to and including the time that

the decision of the National Labor Relations Board comes out of the hopper, every revolution discloses some unreasonable and unlawful invasion and abuse of fundamental rights. *The procedure in this case is merely illustrative.*

We call the Court's attention, at this point, to the fact that at the very beginning of this case counsel for the Company notified the National Labor Relations Board and its attorneys that, in order to expedite the determination of the matter of the constitutionality of this Act and the validity of its application to this company, while objections would be made and reserved to all incompetent, irrelevant and immaterial testimony, no witnesses for the Complainants would be cross-examined and no countervailing evidence on behalf of the company would be offered, and that all *relevant* and *material* matter in the possession of the company would be presented to the Board upon its request.

Let us ascertain how this impartial Board proceeded to hear and try these cases.

For several months preceding the early Fall of 1935, the usual slack season in the plant of the Friedman-Harry Marks Clothing Company, the Amalgamated Clothing Workers of America, a national union of workers in the clothing industry, had been attempting to organize the eight hundred workers in that plant. During the months of August and September of that slack season, the company furloughed and laid off a number of these eight hundred workers. Included among them were ten of the twenty odd manufacturing workers whom the union had succeeded in securing as members. Thereupon, the Union, on behalf of these workers, laid the charge with the National Labor Relations Board that the Respondent had been guilty of unfair labor practices.

There was no strike, no disturbance of any kind, no picketing and not the slightest interruption to production in the company's plant or to its business. Despite this, and despite the fact that the Complainants themselves show that this company operates only one plant, situated in Richmond, Virginia, where it produces, sells and distributes its product, the Board, in order to attempt to assert its jurisdiction over this Respondent, charged that the alleged unfair labor practices "occurred in commerce among the several States" and did "burden and obstruct such commerce and the free flow thereof".

Following its usual procedure, the Board thereupon issued releases to the Press of the country, publishing the alleged guilt of this company, and then demanded access to and a disclosure of all of the company's private records of accounts including the disclosure of the amount of capital invested in it by its various private owners, the names of all of its employes and its payrolls, the amounts and character of all its purchases and from whom made, the amounts of its sales and to whom made, including the number and kind of units, the number of employes in the plant during the years 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, the names and addresses of the directors and officers of the company, the names and addresses of its salesmen, the stock ownership of the company, the affiliation, if any, with other companies, and the former occupations and businesses of its stockholders.

What possible relevancy could the names of this company's customers, the amounts of the purchases, the cost of the various raw materials going into the manufacture of its products and from whom they were purchased, the volume of the company's business, the amount of its invested capital, the names and addresses of its salesmen, have to

either the legal question of whether or not the company was engaged in interstate commerce, or the factual question of whether the company was guilty of the unfair labor practices charged against it? It should be remembered that these hearings were open to and attended by the public and the press.

Having made the Complaint and having publicized it, and having made the "investigation" referred to above, this Board then appointed an *engineer* to act as its Trial Examiner not only to hear the case, but to determine all the legal questions involved, and particularly the applicability of this statute to this controversy.

This Record, containing some five hundred pages of testimony offered by counsel to the Board, who acted as prosecuting officer, shows that although numerous, continuous and strenuous objections were urged to a very large proportion of the testimony, because it was composed of rank hearsay, rumor, unqualified opinion and totally irrelevant, immaterial and unrelated matters of no probative force, the Trial Examiner and the Board, nevertheless, admitted and considered such testimony as the following:

> The testimony of H. K. Herwitz (R. 102-177), a former statistician and Vice-President of the bank of the Amalgamated Clothing Workers of America and a former member of the Men's Clothing Authority under the NRA, as to the development of the manufacture of clothing into a national industry, his opinions as to the interstate character of the production of men's clothing, the distribution of clothing establishments and manufactured clothing among the various States, the percentage of garments cut in the various States in 1934, the percentage of man hours worked in various States in the clothing industry in January, 1935, the

sources of the raw materials entering into the manufacture of men's clothing, the percentage of woolen and worsted goods manufactured in the New England States in 1929, the percentage of woolen, cotton, rayon and all other fabrics and materials used in the manufacture of men's clothing, and their sources, the distribution by wholesale of men's clothing for the year 1929, the distribution by retail of men's clothing for the year 1929, the number of men's and boys' clothing and furnishing stores by States and amounts of sales, the methods of advertising and selling the products of clothing manufacturers, the growth of retail chain stores in the clothing business, his opinion of the affect of the manufacture of men's clothing on the flow of commerce, the method and cost of transportation of men's clothing manufactured, his opinion of the kind of competition existing in the men's clothing business, the amount of unemployment in various clothing manufacturing centers, and his opinion with respect to the wage rates there paid.

The testimony of Julius H. Levy (R. 178-184) a competitor of the Respondent, as to his experience as a clothing manufacturer and President of the New York Clothing Manufacturers Exchange, including such opinions as that "there can be no doubt in my mind but that the men's clothing industry is an interstate as contrasted to an intrastate business"; a dissertation upon the history of the clothing business and the methods employed in the manufacture of men's clothing.

The testimony of Sidney Hillman (R. 185-257), President of the Amalgamated Clothing Workers of America, and former member of the National Labor Advisory Board and National Industrial Recovery Board, as to his familiarity with collective bargaining in industry, his opinion as to its value, a letter from

President Franklin D. Roosevelt to Mr. Hillman on June 17, 1935, congratulating and complimenting him for his work as a member of the National Industrial Recovery Board, a description of the men's clothing industry in America, a history of the Amalgamated Clothing Workers of America, its aims and procedure, his opinion that the Respondent is engaged in interstate commerce and his reason therefor, a description of the alleged unfair labor practices of various other clothing manufacturers in the United States, his quotation from a report of Alexander Hamilton to Congress in 1791, his opinions as to the reasons why one clothing manufacturer is able to undersell another, his opinion as to why many large clothing manufacturers had removed their factories from highly populated cities to smaller communities, his opinion as to the devastating effect of the economic depression of 1929, his opinion as to the benefits and advantages of the National Industrial Recovery Act and the Codes of Fair Competition, a compilation of the average hourly rate paid to manufacturing employees as prepared by the Management Members of the Code Authority for the Men's Clothing Industry, his summary of the testimony of various witnesses before Senate Committees and of articles and reports appearing in labor magazines and Government and State publications, the successful effect of the efforts of the Amalgamated Clothing Workers of America on the clothing industry, an editorial from the official organ of the Union with respect to the policy of the Union, quotations from trade union agreements and the opinions of various Boards and Commissions of those agreements, excerpts from the opinions of economists and sociologists as to the beneficent value of Amalgamated Union, his opinion as to the reasons for and lists of strikes and his comments upon various strikes occurring in the United States during the years 1933 and 1935, a list of clothing

manufacturers who maintain offices in the State of New York, a list of clothing manufacturers who maintain retail stores in the United States and the places where they are located, a table of the amount of national magazine and newspaper advertising, and the cost of it, of clothing manufacturers during the years 1929 and 1933, excerpts of testimony taken before labor commissions and others in the course of various labor investigations, and a table of the strikes and lockouts occurring in the men's clothing industry in 1933 and 1934.

The testimony of Dr. Henry Moskowitz (R. 257-281), Impartial Chairman of the New York Clothing Manufacturers' Exchange and the Rochester Clothing Market, that he acted as secretary of the Board of Arbitration in the Cloak and Suit Industry, and that "the Chairman of the Board was the Hon. Louis D. Brandeis, now Associate Justice of the Supreme Court of the United States" and that he had served in similar capacities in various industries; his explanation of the clothing industry before and since the organization of the Amalgamated Clothing Workers of America, his opinion of the benefit and advantage of collective bargaining, his description of the adjustment of labor disputes through mediation, and his "conclusions" concerning the effect of collective bargaining agreements upon industry, including "excerpts from a typical decision rendered by me" in a labor controversy; an analysis of decisions rendered by him in 1927 and 1928, in the hearings which he held involving clothing contractors and manufacturers and others.

The testimony of William M. Leiserson (R. 282-290), Professor of Economics and Chairman of the National Mediation Board, that he has acted as Impartial Chairman of various labor boards established by collective bargaining agreements in the clothing industry, and

has arbitrated labor disputes; his "observations" of the effect of collective bargaining in the clothing industry; his comments upon the opinions of the Supreme Court; his statement of the purpose of Congress in adopting the National Labor Relations Act, and his opinion that "the most effective way of avoiding strikes and other interruptions to industry on account of labor disputes is to equalize bargaining power between employers and employes . . ."

The testimony of Harry A. Millis (R. 291-296), Professor of Economics and former member of National Labor Relations Board, that he has been a student of labor problems and is familiar with the men's clothing industry; his conclusions as to unequal wages, irreglar hours and working conditions, and their effect on industry; his opinions as to the value of unions and collective bargaining and the benefits to be derived from them.

The testimony of Dr. Benjamin M. Squires (R. 297-307) that he is a lecturer on economics and "has held other positions qualifying him to testify in the field of industrial relations", having acted as arbitrator in labor disputes in the clothing and other industries, and having been special advisor to the National Labor Relations Board; his experience with the Amalgamated Clothing Workers of America and the appreciative attitude of the Government with respect to this Union and its "spirit of cooperation"; his observations of the organization of workers in men's clothing industry and his opinion of the results, including his summary of the testimony of various persons before Government Commissions, culminating in a panegyric on the Union.

The testimony of Boris Maruchess (R. 308-315), labor manager for the New York Clothing Manufacturers'

Exchange and formerly statistician for the Bureau of Labor, that he has assisted in compiling reports on labor and industrial problems in the needle trades and has had experience in the clothing industry, is familiar with clothing strikes and the losses entailed thereby; the organization of the New York Clothing Manufacturers' Exchange, who composed it and the reasons for it; his request that he be forgiven for displaying pride in his accomplishments as labor manager of the Exchange; the cooperative spirit of the Amalgamated Clothing Workers Union in its dealings with his Exchange; his opinion as to the value of collective bargaining agreements and a copy of the agreement between the New York Clothing Manufacturers' Exchange and the Amalgamated Clothing Workers of America.

The testimony of Charles D. Jaffee (R. 316-320), President of the Jaffee-Cohen & Lang Clothing Company, that he has been President of the New York Clothing Manufacturers' Exchange for eleven years; that it engages in collective bargaining and its beneficial results; that its agreement with the Amalgamated Clothing Workers of America "has been aptly described as 'a document in New York clothing history comparable in significance to the Constitution in American history' "; the copy of the menu and program issued on the Tenth Anniversary celebration of the Exchange, containing a picture of and an artcile by the witness in which he "with pardonable pride" congratulates himself upon the "leadership" of his Exchange and upon the Amalgamated Clothing Workers; and another panegyric upon Sidney Hillman, President of the Amalgamated Clothing Workers of America.

The testimony of Max L. Holtz (R. 321-322), President of a company of clothing manufacturers in

Rochester, as to his experience with and opinion of strikes and collective bargaining.

The testimony of Morris Greenberg (R. 323-326), an expert on the technical and practical manufacturing of clothing, and industrial relations in that and related industries; that he was Executive Director of the Men's Clothing Code Authority of the NRA; the processes of manufacturing men's clothing in the United States.

In all this mass of testimony covering approximately four hundred printed pages, there is not one word of proof that the alleged unfair labor practices in this case in any way affected the production of clothing by or the business of the Friedman-Harry Marks Clothing Company, much less interstate commerce, or that they even tended to do so. Yet, this is the testimony upon which the National Labor Relations Board found the Act to be applicable to that company!

At the conclusion of these hearings, on December 5, counsel for Respondent immediately waived all argument and the filing of briefs and entreated the Trial Examiner and the National Labor Relations Board to decide these cases as expeditiously as possible, so that—the facts not having been denied—the legal questions involved might be promptly adjudicated and both the employer and employes be advised of their status. Despite this and despite subsequent repeated requests to the Board, no decision in these cases was forthcoming until March 28, 1936, almost four months later.

It is highly significant, in considering the question of whether or not these alleged unfair labor practices were tending to burden or obstruct interstate commerce, that it took this Board from October, 1935, the time of filing of

the charges, until March 28, 1936, to determine and adjudicate an admitted question of fact and a simple question of law, although everything possible had been done by this Respondent to shorten and expedite the hearings and the Board's labors.

This lapse of time becomes important, however, when it is remembered that this Board, on March 28, finally ordered Respondent to then reinstate the laid-off workers with back pay from the respective dates on which they were laid off to March 28.

The decision, itself, finally arrived at by this Board, constitutes an astonishing exhibition by a quasi-judicial Board, set up to fairly and impartially determine questions of fact and of law. Not only did this Board fail to strike out one iota of the mass of immaterial and irrelevant statements admitted by its Trial Examiner, but it in turn, bottomed its findings and decision entirely upon it.

The Findings of the Board on which it bases its jurisdiction over this controversy and determines this Act to be applicable to this company, are spread over ten pages of its opinion (R. 379-389). These conclusions as to general economic and sociological problems, the size of the men's clothing industry, its importance and the general methods of manufacturing men's clothing and selling it at wholesale and at retail, constitute exactly the same considerations urged upon this Court to support the constitutionality of the NIRA, and summarily rejected by it, in the *Schechter case*, and urged with respect to the coal industry under the Guffey Act and just as summarily rejected in the *Carter case*.

First, the National Labor Relations Board decided (R. 379-389) that the men's clothing industry is one of the

large industries of the country, that the raw materials used in the manufacture of the clothing come from various parts of the country, that various methods of manufacture are employed, that the product is distributed for resale in all parts of the country, that it reaches the consumer by various methods of retailing, that the various manufacturers use national advertising to encourage their sales and that, because of the variation in costs due to geographical locations, manufacturing operations have been moved, from time to time, from one State to another.

Practically none of these Findings of the Board is applicable to the Respondent, and certainly none of them is relevant to the questions here involved. For instance, the Board relied upon testimony to the effect that manufacturers other than this Respondent contract their merchandise out to be fabricated in other plants, that some manufacturers buy parts of garments which have already been made, that some retailers employ men to make alterations on the garments for the consumers, that some manufacturers own and operate retail stores, that others sell by house to house canvassing, that some manufacturers advertise nationally and that others have moved their plants from one State to another at various times. *Not a single one of these "Findings" is true of or applicable to this Respondent.* Yet, it is upon them that the Board determined that Respondent is "engaged in the course and current of interstate commerce" (R. 382-389).

Next the Board decided (R. 389-396) that unfair competitive advantages exist in the clothing industry, due to differences in wage scales and working conditions in various factories and localities; that collective bargaining is advantageous in the clothing industry, that the Amalgamated Clothing Workers of America is a highly praiseworthy

organization, that it has been attempting to unionize the entire clothing industry and to act as the representative of all the workers in the industry in bargaining with their employers as to their wages, hours and conditions of employment.

The findings with respect to Respondent's business (R. 396-399) are that the Company purchases its raw materials in various States in the country, that it manufactures its product in Richmond, Virginia, and sells it to retailers located in other States, that the company advertises its name and location in one national men's wear directory; that its business is substantial, and increased in the year 1935 due largely to the fact that it had secured $50,000 additional capital.

As to the alleged unfair labor practices (R. 399), the Board refused to strike out and adopted in whole the testimony of all the witnesses, although it consisted in large part of rank hearsay, immaterialities and matters which had occurred prior to the adoption of the Act.

From all of the above, the Board reached the astounding conclusion (R. 408, par. 42-43) that "the aforesaid acts of Respondent occurred in the course and conduct of commerce among the several States and immediately affect employes engaged in the course and current of such commerce," and that they "have burdened and obstructed the course and conduct of commerce among the several States and lead and tend to lead to labor disputes burdening or obstructing such commerce and the free flow thereof."

Upon these "findings of fact" and "conclusions of law," the Board passed an Order which, among other things, requires Respondent to reinstate the employes, with back pay

from the date of discharge, and to post notices in conspicuous places in its plant for a period of thirty days, notifying its employes that it will cease and desist from carrying on any of the unfair labor practices charged against it.

Neither justice nor the necessities of this case required the posting of such a notice. After the balance of the Order was complied with and the employes were reinstated in their jobs with back pay, and the employer complied with the Order to cease and desist, the status would have been restored and the employer brought into complete compliance with the Act. The additional requirement that he post such notices is nothing more nor less than vindictive punishment which could serve no other purpose than to impress every employe with the fact that the employer was being compelled to make a public apology, that Union employes stood in a favored position and that the Government would interfere in their behalf upon complaint of "discrimination". The notices amount to an invitation to disgruntled employes to indulge in fault-finding, the fomenting of strikes and exaction of demands with the assurance that the Government will hear and determine the charges, reasonable or unreasonable.

And, it is an inducement to all employes to join the Union and secure permanent employment without fear of discharge. The very requirement that disgruntled employes must be reemployed and retained in service grants to them a greater right than any other law in this country affords to any man. No executive of a business, no technical expert, nor any other person having even a long term written contract with his employer, can secure such a judgment from the Courts. The most that he can secure upon a breach by his employer of the contract, is the monetary damage that he can prove he has sustained. He cannot secure reinstate-

ment. By virtue of the judgment of this Board, however, union members found by the Board to have been "discriminated against" not only receive full monetary "damages" for their losses, but reinstatement in their positions as well. What kind of loyalty, discipline and efficiency can be expected of employes so forced upon their employers? If the very next day after their reinstatement, it becomes necessary to correct or discipline them, is it not inevitable that they will believe and charge that the action is the result of the previous controversy?

The requirement of reinstatement leaves out of consideration entirely the questions of whether at the time of reinstatement a seasonal slack has intervened, or there is a lack of orders for the employers' product, or there is a business depression, or there has been a change in methods of manufacturing. These, or any one of a number of other things may make it inadvisable, if not impossible, for the employer to maintain as large a force of employes as he formerly had. Suppose wage scales have dropped! Suppose the particular operation on which the employes were engaged has been completed! Suppose in the case of a clothing manufacturer he no longer requires pressers by hand because he has installed electrical pressing machines, or that he no longer requires a force of ten cutters because he has introduced electrical cutting knives! Suppose he has found other employes in his plant more efficient and more capable of performing the work or operations previously performed by the reinstated employes! Suppose the clothing manufacturer has found that it is more efficient to employ male operators instead of female operators, or vice versa!

Are all of these conditions to be ignored and the employer still be compelled to reinstate the employes in

their old positions with the same salary? And for how long? Is the employer thus forever married by a "shot-gun" ceremony, for better or for worse, to all of these employes?

But the most arbitrary, unnecessary, unfair, and unreasonable incident in this chronology of administrative events in this case occurred when this Board finally rendered its decisions. After having been requested by the Respondent numerous times over a period of months to decide these cases, and after having held these matters, in which no defenses had been interposed, under advisement for four months, the Board suddenly, on Saturday, March 28, 1936, handed down its decisions, and simultaneously gave out printed copies of them, which had been prepared by its publicity department, to the Press, and at the same moment forwarded petitions for enforcement of its Orders to the United States Circuit Court of Appeals for the Second Circuit, in New York City.

The first notice that Respondent had of these decisions was when it appeared in the newspapers as a result of the Board's press release. The notification to the Respondent was sent by mail to its office and plant in Richmond, and when this notice was received by Respondent on March 30, the Board's petitions for enforcement had already been filed in the Circuit Court of Appeals in New York.

Certainly this Act contemplates that the decision of the Board shall be served upon Respondent at least before any application is made to a Circuit Court of Appeals for its enforcement; and it is equally obvious that Respondent must have a reasonable opportunity to determine for itself and to advise the Board whether or not it will comply with the Board's Order, before a petition may be filed to require compliance with the Order. At a preliminary hearing in

this matter, the Circuit Court of Appeals for the Second Circuit so held.

But this was not all! Although the employe complainants in this case all lived in the City of Richmond, Virginia, although Respondent's factory and offices are in Richmond, Virginia, although all the alleged unfair labor practices took place in Richmond, Virginia, although the Board served all of its notices, including its decision, on the Respondent at its plant and office in Richmond, Virginia, and held all of its hearings there, nevertheless the Board arbitrarily, and over the protest of this Respondent, filed its petitions for the enforcement in the Circuit Court of Appeals for the Second Circuit in New York City and dragged this Respondent there for hearing merely on the technical ground that Respondent maintained a showroom and sales office in New York. And this despite the fact that the United States Circuit Court of Appeals for the Fourth Circuit is located in Richmond, Virginia, the situs of all the parties, the controversy and of all other action by the Board.

This could have been done for no other reason than either to secure what was hoped to be a more favorable forum or to harass, embarrass and cause added expense and difficulty to this Respondent. If the procedure under this Act is in the nature of equitable relief, then it is axiomatic that "he who seeks equity must do equity". To say the very least, this action was taken in flagrant disregard of the convenience, expense and rights of everybody concerned, and for no justifiable reason.

This outline of the methods and the manner of administration of this Act give significant proof, it is respectfully submitted, of its discriminatory and persecutory nature and the abuses which inevitably flow from it.

Regardless of what might be the real purpose and character of this Act, its attempted enforcement against Respondent is beyond the powers granted to Congress by the Commerce Clause of the Constitution, and the Act violates the Due Process Clause of the Fifth Amendment because it is arbitrary, unreasonable and capricious and bears no real and substantial relation to the regulation of interstate commerce.

II.

THE COMMERCE CLAUSE.

(THE NATIONAL LABOR RELATIONS ACT IS NOT APPLICABLE TO THE PURELY LOCAL MANUFACTURING BUSINESS OF RESPONDENT; AND, THEREFORE, THE PROCEEDINGS OF THE NATIONAL LABOR RELATIONS BOARD IN THIS CASE ARE WITHOUT JUSTIFICATION UNDER THE CONSTITUTION.)

(a) Manufacturing is a purely local activity which may not be regulated under the Commerce Clause.

It seems to us a work of supererogation, in addressing this Court, to trace the history of and review the decisions dealing with the meaning of the Commerce Clause. Nor will we burden the Court with our comment upon the many and varied social and economic theories which have been advanced from time to time in attempts to distort and extend its scope.

Suffice it to say that in no decision of the Supreme Court can there be found any authority or warrant for the attempted enlargement of the powers of the Federal Government, to include the regulation of the dealings between an employer, engaged in the purely local business of manufacturing, and his employes.

Such dealings and relations are merely incidents of production. They are not interstate commerce, and they do not directly "affect" interstate commerce. This has been held to be the law so often by the Supreme Court that it has become axiomatic.[1]

The theory of the Government in this case is that labor relations and conditions arising and occurring in production of men's clothing are subject to regulation because the raw materials used therein come from States other than the State in which the manufacturing operations are carried on, and because the finished product ultimately finds its way to retailers and consumers in States other than that in which the garments are made. It contends that, because of these facts, experience shows that any labor dispute arising or occurring in the course of that production may lead to industrial strife and strikes which may "affect" interstate commerce.

This theory was plainly rejected in unmistakable language in both the *Schechter* and *Carter* cases.

In the *Schechter* case, the Court held that the relations of a poultry dealer in New York (who imported chickens into

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[1] *Gibbons* v. *Ogden*, 9 Wheat. 1; *Veazie* v. *Moor*, 14 How. 568, 573-574; *Kidd* v. *Pearson*, 128 U. S. 1, 20-22; *Coe* v. *Errol*, 116 U. S. 517, 526; *U. S.* v. *E. C. Knight Co.*, 156 U. S. 1, 12; *Del., L. & R. R. Co.* v. *Yurkonis*, 238 U. S. 439; *Hammer* v. *Dagenhart*, 247 U. S. 251, 272; *Crescent Cotton Oil Co.* v. *Miss.*, 257 U. S. 129; *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 407-408; *Heisler* v. *Thos. Colliery*, 260 U. S. 245, 259-260; *Oliver Iron Co.* v. *Lord*, 262 U. S. 172, 178; *United Leather Workers* v. *Herkert*, 265 U. S. 457, 467, 471; *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165, 182; *Champlin Rfg. Co.* v. *Commission*, 286 U. S. 210, 235; *Chassaniol* v. *Greenwood*, 291 U. S. 584, 587; *Schechter et al.* v. *U. S.*, 295 U. S. 495; *U. S.* v. *Butler et al.*, 297 U. S. 1; *Carter* v. *Carter Coal Co. et al.*, 298 U. S. 238.

the State of New York from other States for killing and sale), and his employes, did not directly affect interstate commerce. In the *Carter* case, the Government's contention that it had the right to regulate labor relationships in the mining industry (because coal is an important national commodity and, after it is mined, is shipped into various States throughout the country), was as definitely rejected. In the *Schechter* case, the labor relations sought to be regulated existed after the transportation in interstate commerce, in the *Carter* case before.

There is a slight factual difference between the *Schechter* and *Carter* cases and the case at bar. In the *Schechter* case the articles were imported from other States before the conversion, over which the Federal Government sought to impose labor regulations, took place. In the *Carter* case the process of conversion, in which the Government sought to regulate labor conditions, took place before the coal was exported to other States. In the present case, raw materials are imported into the State of Virginia before the manufacturing operations, in which the Government seeks to regulate the labor relations, take place, and the finished product thereafter finds its way into other States. Does this factual difference bear any legal significance?

The attitude of the Courts on this subject is best expressed by the language of Mr. Justice SUTHERLAND in the *Carter* case (p. 310), in reaffirming the decision in the *Schechter* case:

> "A reading of the entire opinion makes clear, what we now declare, that the want of power on the part of the Federal Government is the same whether the wages, hours of service, and working conditions, *and the bargaining about them,* are related to production before interstate commerce has begun or the sale and distribution after it has ended." (Italics ours).

And, as if to anticipate the very facts and legal questions presented in this case, the Court also said (p. 309):

> "The Government's contentions in defense of the labor provisions are really disposed of adversely by our decision in the *Schechter* case, supra. The only perceptible difference between that case and this is that in the *Schechter* case, the Federal power was asserted with respect to commodities which had come to rest after their interstate transportation; while here, the case deals with the commodities at rest before interstate commerce has begun. That difference is without significance. The Federal regulatory power ceases when interstate commercial intercourse ends; and, correlatively, the power does not attach until interstate commercial intercourse begins. There is no basis in law or reason for applying different rules to the two situations. No such distinction can be found in anything said in the *Schechter* case."

In the *Schechter* case, after disposing of the Government's contention that a national crisis and economic depression would support the extension of federal powers, the Court turned to a consideration of whether the provisions of the Live Poultry Code, established under the National Industrial Recovery Act, relating to the hours and wages of employes of poultry slaughter houses in the State of New York, and sales of poultry there made to retail dealers and butchers, were within the regulatory power of Congress under the Commerce Clause.

The Court first held that such transactions were not in interstate commerce and then said at p. 542:

> "Were these transactions 'in' interstate commerce?
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> "Much is made of the fact that almost all the poultry coming to New York is sent there from other States.

> But the Code provisions, as here applied, do not concern the transportation of the poultry from other States to New York, or the transactions of the commission men or others to whom it is consigned, or the sales made by such consignees to Defendants. • • • Defendants held the poultry at their slaughter house markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers. Neither the slaughtering nor the sales by Defendants were transactions in interstate commerce."

The Government's contention that the business attempted to be regulated in that case "affected" interstate commerce was next rejected by the Court in the following language (p. 546):

> "In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects • • •. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control."

The rule that manufacturing is a local activity and does not directly affect interstate commerce, was reaffirmed by the Court in the following language (p. 547), which the Court quoted from its decisions in the cases of *Industrial Asso.* v. *U. S.*, 268 U. S. 64, 82, and *Levering and Garrigues Co.* v. *Morrin*, 289 U. S. 103, 107-108:

"The alleged conspiracy and the acts here complained of spent their intended and direct force upon a local situation—*for building is essentially local as mining, manufacturing or growing crops,*—and if by resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act." (Italics ours.)

To the same effect, in his concurring opinion in the *Schechter* case, Mr. Justice CARDOZO said (p. 554):

"I find no authority • • • for the regulation of wages and hours of labor in the intrastate transactions that make up the defendant's business. As to this feature of the case, little can be added to the opinion of the Court. • • • *Activities local in their immediacy do not become interstate and national because of distant repercussions.*" (Italics ours.)

If there was any doubt, after the *Schechter* decision, that Congress has no power to regulate labor conditions in transactions intrastate in character, such as manufacturing, that doubt has now certainly been entirely dispelled by the opinion of the Supreme Court in the *Carter* case. The Government's contention in that case was based upon the same theory which it had advanced in the *Schechter* case, that the business of coal mining "affects" interstate commerce because coal is shipped outside the State in which it is mined.

In again overruling this argument, the Court, in the *Carter* case, definitely delineated the powers of the States and the powers of the Federal Government to regulate com-

merce, within their respective spheres, in these words (pp. 303-304):

> "One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another State, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the State; in respect of the latter, to regulation only by the Federal Government. *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165, 182. Production is not commerce; but a step in preparation for commerce. *Chassaniol* v. *Greenwood*, 291 U. S. 584, 587.
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> "A consideration of the foregoing, and of many cases which might be added to those already cited, *renders inescapable the conclusion that the effect of the labor provisions of the act, including those in respect of minimum wages, wage agreements, collective bargaining, and the Labor Board and its powers, primarily falls upon production and not upon commerce;* and confirms the further resulting conclusion that production is a purely local activity. It follows that none of these essential antecedents of production constitute a transaction in or forms any part of interstate commerce. *Schechter Corp.* v. *U. S., supra, p.* 542 *et seq.* Everything which moves in interstate commerce has had a local origin. Without local production somewhere, interstate commerce, as now carried on, would practically disappear. Nevertheless, *the local character* of mining, *of manufacturing* and of crop growing, *is a fact, and remains a fact, whatever may be done with the products.*" (Italics ours.)

Despite all these express and continued statements in both the *Schechter* and *Carter* cases, holding a similar system of collective bargaining and a Labor Board with similar powers, to be invalid, the Government now contends that "neither *Schechter Corp.* v. *United States*, 295 U. S. 495, nor *Carter* v. *Carter Coal Co.*, 298 U. S. 238, (are) here applicable". (See Brief for National Labor Relations Board in Case No. 419, p. 17).

We submit that the above language of the Court in the *Carter* case is extremely pertinent, and might well have been written for this case. It fits the situation exactly. Herein, attempt is made to regulate the labor relations, during the course of production, of the Friedman-Harry Marks Clothing Company with its employes engaged in that production. In its ruling upon the *Carter* case, the Supreme Court decided the issues in this case.

(b) The dealings and transactions between the Respondent and its employes, with respect to and in the course of manufacture of its product, bear no relationship to interstate commerce.

As a basis for its jurisdiction in this case, the Board found (R. 408):

> "The aforesaid acts of Respondent occurred in the course and conduct of commerce among the several States and immediately affect employes engaged in the course and current of such commerce. The aforesaid acts of Respondent have burdened and obstructed the course and conduct of commerce among the several States and lead and tend to lead to labor disputes burdening or obstructing such commerce and the free flow thereof."

In order to reach such a conclusion and in order to attempt to relate the production of men's clothing, as carried on by this Respondent, and its dealings with its employes with respect to and in the course of that manufacture, to interstate commerce, the Board is compelled to indulge in the following sophistry:

(1) that men's clothing is an important commodity;

(2) that the raw materials necessary for the production of men's clothing come from various States of the Union and from foreign countries to the point of manufacture;

(3) that men's clothing is produced in only some of the States, while it is shipped to and used in all of them;

(4) that employes in this industry are not on an equal level with their employers with respect to bargaining powers;

(5) that to secure an equal footing for them it is necessary that employes be permitted to organize and exercise their bargaining powers through organizations;

(6) that labor organizations must be permitted complete freedom, without limitation or restrictions, to attempt to unionize industries and businesses, because, they offer the best medium for representation of employes;

(7) that strikes, industrial strife and unrest are the inevitable result of the failure of employers to recognize the rights of their employes to organize and bargain collectively;

(8) that when these conditions exist the movement of commerce among the various States may be affected and impaired;

(9) that if the flow of interstate commerce is interfered with, a decrease in purchasing power may result and may lead to economic depression; and

(10) that therefore and thereby interstate commerce is *directly* affected.

Not only is this sophistry factually specious and fallacious, and beyond the realm of any valid legal concept, but it is especially ridiculous in the light of the particular facts in this case.

When it is sought to apply that sophistry to this case, the Government is constrained to make even these additional assumptions:

(11) that the discharge of nineteen employes and the hostility of the employer toward the union might cause other employes to become suspicious of and dissatisfied with their employer;

(12) that unrest might be caused thereby in the plant;

(13) that other employes might join the union;

(14) that more discharges of employes who have joined the union might follow;

(15) that as a result of such discharges, a strike might result;

(16) that Respondent might not be able to obtain new workers to replace those on strike;

(17) that Respondent might not have sufficient finished product on hand to supply the demands of his customers during the period of the strike;

(18) that Respondent might be unable to produce the amount of merchandise necessary to meet the demands of his customers;

(19) that if the Respondent is unable to supply the demands of his customers, the amount of his goods moving into and through interstate commerce may decrease;

(20) that such a decrease might be of sufficient size and importance to "affect the free flow of commerce" in men's clothing; and

(21) that such an effect upon interstate commerce would be a "direct" one.

The Record in this case directly belies such hypothesis. Here, Respondent discharged nineteen of its eight hundred employes. There is no evidence in this case that the garments upon which these nineteen employes were working were destined for or shipped to customers outside, rather than within, the State of Virginia. There was and has been no disorder, no strife, no interference with the orderly conduct of the business of Respondent, and no strike resulting from the discharge of these workers. The action of Respondent, undefended in this case, has not burdened, obstructed, or affected the flow of interstate commerce, nor has it tended to burden, obstruct or affect the flow of interstate commerce. It has not even affected in any way the flow of production in Respondent's own factory, much less the flow of interstate commerce or the flow of men's clothing into interstate commerce.

And the legal fallacy is as great as the factual fallacy in this case.

The unanimity of the Supreme Court on this point is demonstrated by the following statement of Mr. Justice Cardozo, in his concurring opinion in the *Schechter* case, supra, page 554:

"There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the centre. A society such as ours 'is an elastic medium which transmits all tremors through its territory; the only question is of their size.' Per Learned Hand, J., in the court below. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. * * *"

(c) The Anti-Trust and Current-of-Commerce Cases:

But the Government contends it has the right to utterly disregard the facts of this case and the patent actuality that the alleged unfair labor practices in no wise burdened or obstructed interstate or even intrastate commerce. It argues that the men's clothing industry is an important national industry; that the industry will be able to function better and with less strife if unions are encouraged; that labor disputes between employers and employes have in the past caused and will continue to cause strikes and labor unrest; and that such recurrent controversies and evils affect production, consumption and the flow of the article in interstate commerce, and, therefore the Federal Government may prevent as well as remedy such evils.

Exactly the same contention was made by the Government at great length in the *Carter* case. It was summarily disposed of by the Court in the following language (pp. 308-309):

"It is quite true that rules of law are sometimes qualified by considerations of degree, as the Government argues. But the matter of degree has no bearing upon the question here, since that question is not—

What is the *extent* of the local activity or condition, or the *extent* of the effect produced upon interstate commerce? but—What is the relation between the activity or condition and the effect?

"Much stress is put upon the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment and irregularity of production and effect on prices; and it is insisted that interstate commerce is *greatly* affected thereby. But, in addition to what has just been said, the conclusive answer is that the evils are all local evils over which the federal government has no legislative control. The relation of employer and employee is a local relation. At common law, it is one of the domestic relations. The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclusively in producing a commodity. And the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result. Such effect as they may have upon commerce, however extensive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character."

The language above quoted is so significant and so decisive of the very argument made by the Government in this case, (its Brief in case No. 419, at pp. 14 and 15 et seq.; 71 et seq.) and is grounded upon so many previous decisions of the Court to the same effect, that it requires neither comment nor expansion here.

The Anti-Trust Cases.

In the *Carter* and *Schechter* cases, as in this case, the Government advanced the contention that the decisions in the line of cases involving conspiracy to restrain interstate commerce in violation of the anti-trust laws, were applicable. The Court considered this argument in both of those cases, and completely rejected it on the ground that in the anti-trust cases the acts which were enjoined were in themselves unlawful, interstate commerce was the direct object of attack, and the restraint of such commerce was the immediate end in view and the necessary consequence of the acts. The Court, in holding them to be inapplicable, pointed out that the law involved in those cases was concerned "not with the character of the acts or of the means employed, which might be in and of themselves purely local, but with the intent and direct operation of those acts and means upon interstate commerce."

And it must be remembered, too, that the anti-trust cases involve the prevention of activities in themselves unlawful, while in this case the National Labor Relations Act attempts to make unlawful acts in themselves entirely lawful.

The Current-of-Commerce Cases.

The last resort of the Government in this case is the contention that because the raw materials, which are used in production, come from States other than that in which their conversion and manufacture take place, and because the finished product is destined for and ultimately finds its way to retailers and consumers beyond the borders of the State in which it is manufactured, the process of manufacture is in the "flow" or "stream" or "current" of commerce.

In support of that contention, the Government urges that the line of cases known as the "current-of-commerce" cases,

is applicable here. It cites such cases as *Stafford* v. *Wallace*, 258 U. S. 495, and *Swift & Co.* v. *United States*, 196 U. S. 375, which involved the constitutionality of such statutes as those regulating traders in the commodities handled at stock-yards and in grain elevators, through which cattle and grain merely passed, resting only temporarily during the course of their transportation from State to State.

The Government closes its eyes to the wide and vital difference which exists between an instrumentality such as a stock-yard or a grain elevator for the temporary handling of an article or commodity in the course of its transit, and the process of conversion and fabrication of many raw materials into an entirely different article or commodity.

It is likewise important to remember that there Congress was dealing with matters "affected with a public interest", that it was preventing acts "designed" to affect commerce in the articles in question, and that the activities regulated in those cases were exercised by one group of persons in connection with businesses carried on by another group, rather than the regulation of the internal conduct of a single business.

The attempt was made to draw an analogy between the "current-of-commerce" cases and the *Carter* and *Schechter* cases. The language of the Court in the *Carter* case (pp. 305-306) disposed of that contention:

> "Another group of cases, of which *Swift & Co.* v. *United States*, 196 U. S. 375, is an example, rest upon the circumstance that the acts in question constituted direct interference with the 'flow' of commerce among the States. In the *Swift* case live stock was consigned and delivered to stock yards—not as a place of final destination, but as the Court said in *Stafford* v. *Wallace*,

258 U. S. 495, 516, 'a throat through which the current flows'. The sales which ensued merely changed the private interest in the subject of the current without interfering with its continuity. *Industrial Asso.* v. *United States*, 268 U. S. 64, 79. It was nowhere suggested in these cases that the interstate commerce power extended to the growth or production of the things which, after production, entered the flow. If the Court had held that the raising of the cattle, which were involved in the *Swift* case, *including the wages paid to and working conditions of the herders, and others employed in the business*, could be regulated by Congress, that decision, and decisions holding similarly, would be in point; for it is that situation, and not the one with which the Court actually dealt, which here concerns us. * * * (Italics ours.)

"The restricted field covered by the *Swift* and kindred cases is illustrated by the *Schechter* case, supra, p. 543. There the commodity in question, although shipped from another State, had come to rest in the State of its destination, and, as the Court pointed out, was no longer in a current or flow of interstate commerce. The *Swift* doctrine was rejected as inapposite. In the *Schechter* case the flow had ceased. Here it had not begun. The difference is not one of substance. The applicable principle is the same."

The language above quoted is conclusive when applied to this case. If it be argued that it is not applicable because the facts in the *Schechter* case and in the *Carter* case were not exactly the same as those in the case at bar, the answer is supplied by the case of *Arkadelphia Milling Co.* v. *St. Louis S. W. Rwy. Co.*, 249 U. S. 134, in which the facts were that there was transportation both prior and subsequent to the manufacturing operations. In demonstrating that federal regulation may not, and the flow of commerce does

not, begin until after manufacturing has ceased and the article is placed in interstate commerce, even though raw materials are transported to the place of manufacture, the Supreme Court said, in the *Carter* case (p. 306):

> "The distinction suggested is illustrated by the decision in *Arkadelphia Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S. 134, 150-152. That case dealt with orders of a state commission fixing railroad rates. One of the questions considered was whether certain shipments of rough material from the forest to mills in the same state for manufacture, followed by the forwarding of the finished product to points outside the State, was a continuous movement in interstate commerce. It appeared that when the rough material reached the mills it was manufactured into various articles which were stacked or placed in kilns to dry, the processes occupying several months. Markets for the manufactured articles were almost entirely in other states or in foreign countries. About 95% of the finished articles was made for outbound shipment. When the rough material was shipped to the mills, it was expected by the mills that this percentage of the finished articles would be so sold and shipped outside the State. And all of them knew and intended that this 95% of the finished product would be so sold and shipped. This court held that the state order did not interfere with interstate commerce, and that the *Swift* case was not in point; as it is not in point here."

And if it then be argued that in the *Arkadelphia* case the raw materials were shipped from *within* the State to the mill, while in this case raw materials come from *without* the State to the factory, this is a distinction without difference. The Courts have always held that, for the purpose of establishing railroad rates, as long as commodities, whose character is not changed, are in a continuous flow of interstate

commerce, the federal rate-making power attaches from the point of original shipment, whether the commodity moves in intrastate or interstate transportation to the point of temporary stoppage. *Carson Pet. Co.* v. *Vial*, 279 U. S. 95; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111.

The Decisions of the Circuit Courts of Appeals construing this Act with respect to the Commerce Clause.

Five different Circuit Courts of Appeals of the United States have thus far passed upon cases involving the question of whether this Act was, under the Commerce Clause, applicable to various manufacturing businesses.

It is significant to note that, without a dissenting voice being raised, it was uniformly held that the power of Congress under the Commerce Clause could not be extended to the regulation of labor relations between employers and employes in manufacturing businesses.

Foster Brothers Manufacturing Company, Inc. v. *National Labor Relations Board*, (C. C. A. 4, October 6, 1936) Case No. 4074

Fruehauf Trailer Company v. *National Labor Relations Board* and *National Labor Relations Board* v. *Fruehauf Trailer Company*, 85 Fed. (2d) 391 (C. C. A. 6, June 30, 1936)

Pratt v. *Stout et al.*, 85 Fed. (2d) 172 (C. C. A. 8, August 5, 1936)

National Labor Relations Board v. *Jones & Laughlin Steel Corporation*, 83 Fed. (2d) 998 (C. C. A. 5, June 15, 1936)

National Labor Relations Board v. *Friedman-Harry Marks Clothing Company, supra.*

III.

THE DUE PROCESS CLAUSE.

(THE ACT IS AN UNCONSTITUTIONAL INTERFERENCE WITH THE PROPERTY AND LIBERTY OF CONTRACT OF RESPONDENT AND ITS EMPLOYES.)

(a) The specific violations of the Fifth Amendment.

Whether or not the National Labor Relations Act is a valid exercise of the power of Congress to regulate interstate commerce, it is unconstitutional because it is violative of the due process clause of the Fifth Amendment to the Constitution.

The Fifth Amendment guarantees that no person shall "be deprived of life, liberty or property without due process of law". Inherent in the liberty and property guaranty is the inalienable right of every citizen to engage in any lawful business or calling, to enter into all contracts which may be necessary and proper, to sell his labor or purchase that of another upon such terms as he desires.

Necessarily included among these are the right of an employer to hire and discharge whomever he pleases, whenever he pleases and for whatever reason; the right of an employer and his employe to arrive at an agreement between themselves in any manner and upon any basis they see fit respecting hours, wages and other conditions of employment; and, the right of an employe to be secure in his position, subject only to being discharged at the will of his employer.

This Act definitely and distinctly violates the Fifth Amendment in four particulars.

First, Sub-sections 3 and 4, of Section 8, provide that it shall be an unfair labor practice for an employer to discriminate "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization", or "to discharge or otherwise discriminate against an employe because he has filed charges or given testimony under this Act." These sections attempt to regulate the conditions under which an employer may engage his workers and under which he may discharge them.

This is tantamount to depriving the employer of all discretion in the matter of engaging, advancing, demoting, disciplining, furloughing and discharging his employes. It actually substitutes management by this Board for that of the owner of the business. How can this Board determine the capabilities and efficiency of employes and the innumerable and delicate questions of particular employments and daily routine?

Even from the standpoint of the employe, these sections are an arbitrary and unreasonable interference with his rights. Moreover, these sections place union employes in a preferred and favored status over non-union workers as to tenure of employment and advancement therein.

The same provisions appearing in Section 7A of the NIRA were specifically examined and held to be obnoxious in the case of *Rosenthal-Ettlinger* v. *Schlossberg*, 226 N. Y. Supp. 762, where the Court said:

> "If that (Section 7a) means that an employer may not discharge an employe for any reason, or for no reason, and in the case of any man discharged, must be prepared to show good cause for the discharge, other than the union affiliations of the man discharged, all em-

ployees who are union members have been transferred to a status equivalent to that of the civil service, a result which could not have been intended. Whatever the rule of the unions may be, that is not the law of the land."

Second, Section 9(a) provides that representatives elected by the *majority* of the employes shall be the *exclusive* representatives of *all* the employes for collective bargaining purposes. This section, by its terms, prohibits an employer from dealing individually with his employes, and from dealing with minority groups of his employes, in respect to rates of pay, wages, hours or other conditions of employment. By the same token, it makes agreements between the majority group and the employer, as to all conditions of employment, binding upon all individual workers and upon all minority groups, thereby depriving each of them of his right to make his own terms with his employer.

The legal philosophy of this section was definitely repudiated in the *Carter* case, supra (p. 311):

> "The power (to fix hours and wages) conferred upon the majority (of producers and of miners) is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business • • •.
>
> And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do

more than refer to decisions of this court which foreclose the question. *Schechter Corp* v. *United States*, 295 U. S. at p. 537; *Eubank* v. *Richmond*, 226 U. S. 137, 143; *Washington ex rel. Seattle Trust Co.* v. *Roberge*, 278 U. S. 116, 121-122."

Third, Sub-section 5, of Section 8, makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employes, subject to the provisions of Section 9(a)."

The term "collective bargaining" must have some meaning. Obviously, the framers of this Act intended it to carry a connotation beyond the mere requirement that an employer must meet with his employes and discuss conditions of employment with them. Its real intent and meaning are best understood in the light of the administrative interpretation of this section, which has simply been paraphrased from Section 7(a) of the National Industrial Recovery Act. The old National Labor Relations Board, set up under the terms of that Act, as well as the present National Labor Relations Board, operating under the National Labor Relations Act, have uniformly and consistently held in numerous cases that the requirement, that an employer collectively bargain with his employes, means that the employer shall continue to bargain with his employes *until an agreement actually has been reached.*

See cases cited in appendix.

With the intent of this provision thus disclosed, it will be seen that this section of the National Labor Relations Act interferes with the rights of the employer by requiring him to enter into contractual negotiations with persons with whom he may not care to contract and coercing him into agreeing to terms which may not be acceptable to him.

The worst feature of this so-called "collective bargaining" lies in the indisputable fact that it does not require bargaining by both parties to the controversy. It is utterly lacking in mutuality and does not provide an equality of bargaining position.

The employer is forced to bargain. He must recede from his original position in order to compromise with the union demands, and then he is bound to carry out his agreement. On the other hand, the union can not be required to bargain, even if the employer desires or demands it. It need not retreat from its original demands, however preposterous; and it and the employes it represents are not bound and cannot be compelled to carry out any agreement it makes.

Thus this great social scheme, which is to be the new industrial and economic panacea, is, under this Act, prostituted into the equivalent of a dangerous weapon in the hands of a dominant union with which to attack and belabor a prostrate employer, stripped of every means of defense and bound hand and foot!

Fourth, Sub-section 3, of Section 8, specifically provides that an employer may agree with the majority of his employes, through collective bargaining, to employ only union members; while, at the same time, Sections 7, 8 and 9 of the Act make it unlawful for an employer to agree to employ only non-union workers. This section invades the rights of individual workers and employers by permitting unions, through the medium of compulsory collective bargaining, to prescribe that non-union employes shall join their union as a condition precedent to obtaining or retaining their positions, at the same time making it unlawful for any individual employe or group of employes to obtain

an agreement from his or their employer not to employ union workers.

The Act requires bargaining, which is intended to mean an agreement, and makes it lawful for the agreement to provide for a closed shop. Therefore, the terms of sub-section 3, of Section 8, are tantamount to a requirement that every employer shall, upon application of a majority of his employes, agree to a "closed shop."

None of these provisions can find support in the decided cases. As a matter of fact, the rights which they invade have been repeatedly upheld and protected by the decisions of the Supreme Court.

The basic and classic statement of the principle which governs, is contained in the opinion in the case of *Allgeyer* v. *Louisiana*, 165 U. S. 578, wherein the Court (at page 589) said, with respect to the Fifth Amendment:

> "The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

In the case of *Adair* v. *United States*, 208 U. S. 161, the Court held unconstitutional a provision of a statute passed by Congress making it unlawful for any person connected with an interstate carrier to discharge an employe of that carrier because of his membership in a labor union. The

opinion in this case extends to and embraces in its scope all of the infringements upon personal contractual rights outlined above. The Court (p. 174) said:

> "While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employe to quit the service of the employer for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employe. It was the legal right of the defendant Adair —however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.
>
> "• • • Congress could not, consistently with the Fifth Amendment, make it a crime against the United

States to discharge the employe because of his being a member of a labor organization.

"* * * If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business, *only* members of labor organizations, or *only* those who are *not* members of such organizations—a power which could not be recognized as existing under the Constitution of the United States."

Interference with the personal rights of an employer and employe to bargain individually with respect to wages was held invalid in the case of *Adkins et al.* v. *Children's Hospital,* 261 U. S. 525. In holding unconstitutional an Act creating a Board empowered to fix minimum wages for women and children employed within the District of Columbia, the Court said (p. 545):

"That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause (5th Amendment) is settled by the decisions of this Court, and is no longer open to question (citing authorities.) Within this liberty are contracts of employment of labor. In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining."

The decision in the *Adkins* case was reviewed by the Supreme Court within the past few months. The opinion in *Morehead* v. *People, ex rel. Tipaldo,* 298 U. S. 587, reaffirmed exactly the decision in the *Adkins* case, as well as the reasoning contained therein.

In the case of *Wolff* v. *Kansas,* 262 U. S. 522, the Court had before it the validity of the Court of Industrial Rela-

tions Act of Kansas, which Act provided that a court of three judges might hear any dispute over wages or other terms of employment in certain industries, including the clothing industry, and make findings and fix wages and other conditions of employment, which would be binding on the parties involved. In holding this State legislation invalid, the language of the Supreme Court (at page 533), is:

> "The necessary postulate of the Industrial Court Act is that the state, representing the people, is so much interested in their peace, health, and comfort that it may compel those engaged in the manufacture of food and clothing, and the production of fuel, whether owners or workers, to continue in their business and employment on terms fixed by an agency of the state, if they cannot agree. Under the construction adopted by the State Supreme Court the act gives the industrial court authority to permit the owner or employer to go out of the business, if he shows that he can only continue on the terms fixed at such heavy loss that collapse will follow; but this privilege, under the circumstances, is generally illusory. *Block* v. *Hirsh*, 256 U. S. 135, 157, 65 L. Ed. 865, 871, 16 A. L. R. 165, 41 Sup. Ct. Rep. 458. A laborer dissatisfied with his wages is permitted to quit, but he may not agree with his fellows to quit, or combine with others to induce them to quit.
>
> "These qualifications do not change the essence of the act. *It curtails the right of the employer, on the one hand, and of the employee, on the other, to contract about his affairs. This is part of the liberty of the individual protected by the guaranty of the due process clause of the* 14*th Amendment. Meyer* v. *Nebraska*, decided June 4, 1923 (262 U. S. 390, 43 Sup. Ct. Rep. 625). While there is no such thing as absolute freedom of contract, and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom

> is the general rule, and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances. *Adkins* v. *Children's Hospital*, decided April 9, 1923 (261 U. S. 525, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394)." (Italics ours.)

In a second appeal in the same case, involving the same statute, 267 U. S. 552 (1925), the Court said:

> "The system of compulsory arbitration which the Act establishes is intended to compel and if sustained will compel, the owner and employes to continue the business on terms which are not of their making."

These cases do not stand by themselves, but form only a part of a long list of recent decisions in Federal and State jurisdictions reaffirming the principle that the contractual rights of employer and employe may in no wise be interfered with by either Congress or the State Legislatures under the 5th and 14th Amendments.[1]

The Government urges that the case of *Texas and New Orleans Ry. Co.* v. *Brotherhood of Railway & S. S. Clerks*, 281 U. S. 548, dissents from the otherwise uniform rule of law expressed in the cases heretofore cited and gives sanction to this Act.

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[1] *Lochner* v. *N. Y.*, 198 U. S. 45; *Coppage* v. *Kansas*, 263 U. S. 1; *Hitchman Coal & Coke Co.* v. *Mitchell et al.*, 245 U. S. 229; *Meyer* v. *State of Neb.*, 262 U. S. 390; *Murphy* v. *Sardell*, 269 U. S. 530; *Donham* v. *West-Nelson Mfg. Co.*, 273 U. S. 657; *Ribnik* v. *McBride*, 277 U. S. 350; *Near* v. *Minn.*, 283 U. S. 697, 707-708; *Montgomery* v. *Pac. Elec. Ry. Co.*, 293 Fed. 680 (C. C. A. 9th Cir.); *People* v. *Marcus*, 185 N. Y. 257; *Re Opinions of the Judges*, (Mass. S. J. C.) 171 N. E. 234; *State* v. *Daniels*, (Minn.) 136 N. W. 584; *Bemis* v. *State*, (Okla.) 152 Pac. 356; *Topeka Laundry Co.* v. *Court of Ind. Rel.*, 119 Kansas, 12; *Stevenson* v. *St. Clair*, 161 Minn. 444; *Folding Furn. Works* v. *Indust. Comm.*, 300 Fed. 991; *People* v. *Successors of Laurnaga & Co.*, 32 P. R. 766.

An examination of the decision in that case, however, discloses that it is not authority for the validity of any of the specific provisions of the National Labor Relations Act which Respondent contends violate the Fifth Amendment; nor can the opinion in that case be cited in any way as authority for the proposition that the Federal Government may place any limitation upon the right of an employer conducting a ***private business***, to hire and fire with impunity, or may require such an employer to bargain with representatives of his employes to a concluded agreement, or may subject an unwilling minority of his workers to the domination of a majority and to any contracts into which the majority may enter.

The Railway Labor Act involved therein provided for a federal mediation board to which both employers and employes might *voluntarily* go in an effort to settle their disputes, and declared the principle that employes of interstate carriers should be free to organize and join labor unions without interference or coercion from their employers. This latter was merely incidental to effectuating the purpose of creating the board, once the parties had subjected themselves to it.

The opinion in that case affirmed the *Adair* case, and it must be remembered:

> (a) That Act applied only to common carriers engaged in the transportation of commerce between the several States, whose businesses are affected with a great national public interest. Every phase of the operation of such public businesses is subject to the control and regulation of the Federal Government, and the very continuance or discontinuance of these businesses themselves are within the absolute discretion of the Government and not at the pleasure of the owners.

(This difference is of the greatest significance and importance in a consideration of the National Labor Relations Act, which is applicable to inherently intrastate enterprises affected with no public interest, the internal regulation and continuance of which is admittedly of only private concern.)

(b) The Railway Labor Act concerned itself only with employer-employe relations actually occurring in *interstate* commerce. Even these were limited by the Opinion of this Court in the *Alton* case, *infra,* which held that such regulations must bear a ***direct*** and ***reasonable*** relationship to interstate commerce.

(However, the National Labor Relations Act applies to *intrastate* businesses, and the Government contends that the Board has jurisdiction over all labor disputes regardless of whether they ***directly affect*** or ***bear a substantial relationship*** to interstate commerce.)

(c) The Railway Act did not make any attempt to govern, limit or regulate in any way the relations between employer and employe, except to protect the machinery of voluntary mediation.

(The primary violations of the "Due Process Clause" under the National Labor Relations Act lie in its elaborate, arbitrary and unreasonable restrictions and limitations upon employer-employe relations, aimed at and leveled upon the employer and non-union employe.)

(d) The Railway Act, as this Court was careful to point out and emphasize, provided only a system of voluntary mediation upon such subjects as the parties agreed to submit for consideration, and the employer was under no obligation to mediate.

(Not so the National Labor Relations Act, which sets up a compulsory system of unilateral bargaining to a conclusion, at least if possible, requiring only the employer and not the employe or the union to bargain, and a Board with plenary powers to determine whether the proposition made by the employer is fair and proper, but with no jurisdiction over the union.)

(e) The Railway Labor Act of 1926 contained no provisions for majority rule.

(The viciousness and illegality of the Act in question are demonstrated in part by its requirement that any agreement made by a majority of employes, determined according to units designated in each case by the Board, shall be binding upon all minority employes and groups. This Act also prohibits an employer from bargaining or dealing in any way with such individual employes or minority groups.)

(f) Again, the Railway Act, as stressed by the Court, did not in any way affect "the normal right of the carrier to select its employes or to discharge them".

Much is made by the Government of the fact that this Court, in the *Texas & New Orleans* case affirmed the action of the lower court in requiring the reinstatement of discharged employes.

That reinstatement was not under any express terms of the Railway Act. The facts in that contempt case not only warranted but constrained the Court, in order to protect its own position and integrity, to take such drastic action. Those facts were that the Court, after the dispute had been submitted by agreement of the parties to the Mediation Board, had issued an injunction at the request of the union,

prohibiting the company from interfering with the employes' free choice of representatives for mediation purposes.

It was in the face of this outstanding injunction that the railroad company deliberately and flagrantly attempted to form a company union and discharged employes who were active in recruiting the labor union vote!

(In reviewing the *Texas & New Orleans* case, Mr. Justice ROBERTS, in the case of *R. R. Retirement Board* v. *Alton Ry. Co.*, 295 U. S. 330, decided only recently, (at page 369) said:

> "It was pointed out that the Act did not interfere with the normal right of the carrier to select its employes or discharge them."

The National Labor Relations Act, on the other hand, expressly interferes with the employer's right to hire and discharge his employes, without reference to whether or not there is a pending labor dispute or whether the process of "collective bargaining" is being carried on.)

(b) The basic purpose of the Act is to accomplish compulsory collective bargaining, binding upon minority employes; this being invalid, the entire statute must fall.

From a reading of the National Labor Relations Act, from the Congressional Committee reports and debates upon it at the time of its consideration, and from its administration by the National Labor Relations Board, it is clear beyond contradiction that the primary and fundamental purpose, and the end to be accomplished by the Act, is the establishment of the mechanism of compulsory unilateral bargaining, binding alike upon employer, the ma-

jority employes in whose behalf negotiations are carried on (who are given the exclusive bargaining power), and the minority groups and individual employes, who are not represented. All the other features of the Act, such as those protecting the formation and maintenance of labor unions, found in Section 8, are inserted as aids to effectuating this purpose.

See: Senate Comm. Rept. No. 573, 74th Cong. 1st Sess.
Congressional Rec., May 15, 1935, Vol. 70, No. 101, 74th Cong., 1st Sess., p. 7852.

Every attempt which has been made to enact such legislation as this, has been stricken down by the courts, as violative of the due process amendments to the Constitution; and the decision of the Supreme Court in the *Carter* case is the final word as to the unconstitutionality of any scheme of enforced collective bargaining by majority rule. In that case the Court had before it the question of the constitutionality of a provision of the Guffey Act that two-thirds of the producers of coal and a majority of the miners in a district might fix minimum wages to be binding upon all producers and upon all miners in that district.

This Court held that such a provision not only constituted "legislative delegation in its most obnoxious form", but also that such provisions amounted to "intolerable and unconstitutional interference with personal liberty and private property." It is respectfully submitted that the provisions of the Guffey Act in that regard are wholly indistinguishable in principle from those in the National Labor Relations Act, and that the decision of the Supreme Court is conclusive on the similar point here involved.

If the backbone of the Act, compulsory collective bargaining, is removed, the Act cannot function and becomes of no force and validity as an inseparable whole, even if some of its subsidiary members can be independently sustained. For, while it may be possible for the Act to function despite the removal of a subsidiary feature, it is impossible for it to stand up in the absence of its backbone. It must be obvious that if the main scheme falls, it carries with it the collateral provisions which were merely designed to be in aid of that scheme.

The Government does not and cannot deny that a national system of compulsory collective bargaining is the backbone and *sine qua non* of the Act.

However, it argues that the question of severability may not be raised in this case because the specific charges contained herein do not include a direct charge that this Respondent failed to bargain collectively with its employes.

On the other hand, when it comes to argue the validity, *vel non* of the Act, and tries to justify its applicability to this Respondent under the Commerce Clause, the entire burden of its argument is that a failure to collectively bargain in the men's clothing industry causes industrial strife which may "affect" interstate commerce!

> Government's Brief in Case No. 419, particularly pp. 93, 84, 43, 42.
> See also: Senate Comm. Rept. May 1, 1935; p. 14.

Indeed, this is the only justification the Government urges for introducing into this case the mass of testimony relating to the history of collective bargaining in the clothing industry!

(c) The Act gives to the Board and the Board has assumed powers which, if valid at all, may be exercised only by Congress and the duly constituted courts of the United States.

Section 9 (a) of the Act prescribes that the representatives of a majority of the employes, "in a unit appropriate for such purposes", shall be the *exclusive* representatives of *all* the employes in such unit for the purpose of collective bargaining. Section 9 (b) of the Act gives the Board power to decide in each case whether "the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof".

These provisions constitute an unlawful delegation of power to the National Labor Relations Board. There is no legislative standard or rule prescribed for the Board to apply in determining what is a "unit". The Act grants to the Board an absolute discretion on this whole subject, which is vital to collective bargaining, as contemplated by the Act. (*See Senate Comm. Report, dated May 1, 1935; p. 14*).

The failure of Congress to set up and delineate a plan or standard for the Board, in this Act, is similar to the situation presented in the National Industrial Recovery Act. Such a delegation of power to the President, under that Act, was held to be unconstitutional and to render it void and invalid in the *Schechter* case and in the case of *Panama Refining Co.* v. *Ryan*, 293 U. S. 388.

That this power vested in the National Labor Relations Board is both a real and an extreme one is proven by the fact that this Board is thereby placed in the position of determining whether all industry and business shall be unionized on a craft basis or by industries. Moreover, if the National Labor Relations Board determines to make the plant the "appropriate bargaining unit", it becomes apparent at

once that a craft group, composed of a bare majority of the employes in that plant, can bargain for and determine the wages and other working conditions of groups and individuals doing entirely unrelated and different types of work, whether of greater or lesser value or whether involving greater or lesser skill.

For instance, in a small clothing factory of one hundred employes, fifty-one ordinary sewing machine operators would be able to dictate the hours and wages of ten highly skilled cutters, two trained designers, eight pressing machine operators, four examiners, three bundle boys and twenty-two other employes doing all kinds of incidental work.

On the other hand if the labor Board divides this plant into craft groups and designates each craft as a bargaining unit, then the employer must deal in the above situation with at least seven or eight different collective bargaining groups, under a threat of strike from each group and with the Board supervising his bargaining with each group.

Likewise if the employer has a number of plants, it is for the Board to determine whether or not they shall comprise one unit or several units. For instance, if there are two plants performing interdependent and interrelated operations in the process of manufacture, one located in Richmond and the other in Rochester, the plant in Richmond having two hundred and fifty employes and the Rochester plant seven hundred and fifty, the Board can say that the two plants together constitute the bargaining unit, thereby permitting the seven hundred and fifty workers in Rochester, constituting the majority, to elect representatives from their own plant in Rochester to negotiate for wages and working conditions to apply not only to their own plant in

Rochester but to the Richmond plant as well, where economic conditions might be entirely different, and the employes in Richmond would be deprived of all right to bargain with respect to their own wages and working conditions.

But if the Board should determine that the two plants constituted separate and distinct bargaining units, the minority employes in the Richmond plant could demand higher wages than those prevailing in Rochester, go out on strike, throw the seven hundred and fifty workers in the Rochester plant out of work and force the employer to bargain with the minority of his employes. And the same thing is true in every individual factory or business plant having different groups performing different kinds of operations or work within its own walls.

In any event, the desires and preferences of both employer and employes, with respect to the appropriate bargaining unit are disregarded by the Act and placed within the sole autocratic power of the Labor Board, which so far has followed the recommendations and demands of the organized labor union in this regard.

Congress, itself, does not have the power to dictate the number of employes or the kind of employes according to occupation which, as a group, shall constitute a collective bargaining unit. (*Carter* v. *Carter Coal Co., supra*). How, then, can such power be exercised by a Board for which no standard has been set by which it must determine such units?

(d) The Order of the Board requiring the reinstatement of the employes, with back pay, is arbitrary and illegal.

Not only did the Board's Order require the reinstatement of the complaining employes, but it required that this Re-

spondent "make them whole for the loss of pay they suffered by payment of a sum equal to that which each would normally have earned during the period from the date of termination of employment to the date of offer of reinstatement, computed by averaging the wages earned by other employes engaged in the same operation over that period."

In this arbitrary manner the Board computes the loss by averaging the earnings of other employes, entirely ignoring the actualities of the situation, and the fact that all of these employes in this case were compensated on a piecework rather than on a time basis, and that their individual earnings depended upon the actual amount of work they performed and not upon the number of hours they worked.

For example, it may very well be, and in at least some instances it was, true that the employes discharged were the least efficient in their respective operations, so that this back pay, taken on an average of the operation, would be considerably more than the individual complainants would have earned. Moreover, the Record (pp. 352, 354, 466, 507, 522) shows that it is the custom in this industry for employes to be shifted with great frequency from operation to operation, with consequent changes in the rate of pay and amount of earnings, depending upon the type and character of the work being performed. Nor does the method make any allowance for sickness, temporary lay-offs, technological changes during the period, or any other of the innumerable factors which play an important part in determining the amount of earnings of individual employes.

So that in addition to arbitrarily requiring the employe to be returned to his work, whether he is needed or not, the Act has required the National Labor Relations Board to

act as a jury in this case and to award a money verdict in the case of each individual complainant, based not upon the facts in each particular case but upon a scheme which the Board deems to be fair.

Personal service contracts have never been subject to suits for specific performance. Neither employer nor employe has ever been able to force the other to carry out a contract calling for work and labor, in which the delicate relationship of "master and servant" was the prime consideration. This intimate and personal relationship has always impelled the courts to hold that no person could be required unwillingly to work for some one else, nor could any employer be required to retain in his service one who could not work with him and for him in harmony.

This did not leave the parties, however, without legal relief or redress. But the redress is a civil and not an equitable one. The employe has always had the right to recover from his employer any damages he may have actually sustained by breach of the contract. And the same relief is open to the employer, if he is able to prove and collect any damages.

In the enforcement of this civil remedy, it has always been the function of a jury, from the earliest days of the common law, to assess the damages, based upon the terms of the actual contract, if there was one, and if not, upon a *quantum meruit* basis, less, in each instance, the amount of money actually earned during the period involved. And, as in any other action, the complaining party is required to attempt to mitigate the damage, the employe by seeking other employment and the employer by seeking other help.

It is interesting to note in this case that although this Board rendered a monetary verdict for 19 complainants

against Respondent, covering a period of eight months at the time of its decision and eighteen months at the present time—because the Order is still running—it did not even trouble itself to first ascertain the former wages of any of these persons, nor whether they had attempted to seek work or had actually been at work earning the same or more or less money. Nor did it stop to inquire whether these former employes would return to work if reinstated and at the same wage.

Suppose these persons have removed to other localities, or suppose they are at present in other occupations, how far and how long must we look for them, and how long must we hold the jobs open for them to accept our offer of reinstatement?

This Act in this respect is totally without precedent. It marks a new legal as well as social and economic concept directly in the teeth of all of our law and jurisprudence.

The only Judge who has commented on this specific feature of the Act was Circuit Judge Wilbur (9th C. C. A.), in the case of *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, decided January 11, 1937, who said:

> "The employer • • • has lost the power to control his employe. The employes are cemented into their positions not because of fidelity to their employer, but because of fidelity to a labor organization. It was said long ago that 'a man cannot serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other.' (Matt. 6: 27). • • •
>
> "An action for damages for a wrongful discharge of an employe is a form of action known to the common law, and well within the right to a trial by jury as known

at common law. Hence, the Act, so far as it authorizes the Board to assess damages without the intervention of a jury, is unconstitutional. (See discussion of corresponding provisions of the Interstate Commerce Act as first enacted in 1887, [24 Stat. 379], before its amendment in 1888, [25 Stat. 855]; *Western N. Y. & P. R. Co.* v. *Penn. Refining Co.*, 137 Fed. 343, 349. See also 12 C. J. 131, Sec. 193)."

CONCLUSION.

It is submitted that the National Labor Relations Act is unconstitutional, and that the attempt to apply it to this Respondent is invalid. The Orders of the Court below, denying the Petitions of the National Labor Relations Board, should be affirmed.

Respectfully submitted,

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APPENDIX.

Cases in which the old and present National Labor Relations Board has held that the intent of the Act is to require employers to enter into agreements with their employes as a result of collective bargaining, and has ordered employers to negotiate and enter into such agreements:

Pierson Manufacturing Company and United Garment Workers of America, Local No. 247, December 28, 1933.

Houdee Engineering Corp. and United Automobile Workers, Federal Labor Union No. 18839, decided August 30, 1934.

National Aniline & Chemical Company and Allied Chemical Workers, Local No. 18705, decided October 3, 1934.

Atlanta Hosiery Mills and American Federation of Hosiery Workers, Local No. 76, decided November 5, 1934.

Eagle Rubber Company and United Rubber Workers Federal Labor Union No. 18683, decided May 16, 1934.

National Aniline & Chemical Company and Allied Chemical Workers Local No. 18705, decided May 25, 1934.

Connecticut Coke Company and United Coke and Gas Workers Union No. 18829, decided June 30, 1934.

Eagle Rubber Company and United Rubber Workers Federal Labor Union No. 18683, decided November 8, 1934.

The Consolidated Film Company and The International Printing Pressmen and Assistants' Union of North America, decided December 5, 1934.

Colts Patent Fire Arms Manufacturing Company and Federal Labor Union No. 19393, Plastic Workers Union No.

18945 and International Association of Machinists, Local No. 354, decided February 21, 1935.

Poinsatte Auto Company, Inc. and International Association of Machinists Friendship Lodge No. 70, decided March 7, 1935.

Resnick Brothers and International Pocketbook Workers Union, decided March 15, 1935.

The Laclede Gas Light Company and Gas House Workers Union No. 18799, decided March 19, 1935.

Denver Towel Supply Company, Inc. and International Brotherhood of Electrical Workers, Local Union No. 647, decided April 8, 1935.

Southern Broadcasting Stations, Inc. and International Brotherhood of Electric Workers, Local No. 647, decided April 9, 1935.

In the Matter of Wolf Publishing Company and Cincinnati Typographical Union No. 3, decided April 11, 1935.

Nordstrom's, Inc. and Retail Clerks' International Protective Association Local No. 174, decided April 19, 1935.

Square D Company and National Brotherhood of Operative Potters Local No. 145, decided April 29, 1935.

Berger Manufacturing Corporation and Loyalty Local No. 18903, decided May 2, 1935.

Federal Mining & Smelting Company and International Union of Mine, Mill and Smelter Workers, Local No. 9, decided May 9, 1935.

In re Atlantic Refining Company and Local Nos. 310 and 318, International Association of Oil Field, Gas Well and Refinery Workers of America, decided March 19, 1936.

In the Matter of the Belmont Stamping and Enameling Company and Stamping and Enameling Workers Federal Labor Union No. 18816, decided March 20, 1936.

Re S. L. Allen Co., decided May 15, 1936.

Re M. H. Birge Co., decided May 18, 1936.

St. Joseph Stock Yards Co., decided July 9, 1936.

SUPREME COURT OF THE UNITED STATES.

Nos. 422 and 423.—October Term, 1936.

National Labor Relations Board, Petitioner,		On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
422	*vs.*	
Friedman-Harry Marks Clothing Company, Inc.		
National Labor Relations Board, Petitioner,		
423	*vs.*	
Friedman-Harry Marks Clothing Company, Inc.		

[April 12, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The National Labor Relations Board, by its orders of March 28, 1936, required the respondent, Friedman-Harry Marks Clothing Company, Inc., to cease and desist from discharging any of its employees or otherwise discriminating in regard to the tenure and conditions of their employment, and from threatening such action, for the reason that such employees have joined or assisted the Amalgamated Clothing Workers of America or otherwise engaged in union activity; from maintaining surveillance of the activities of the labor organization and of their employees in connection therewith; and from interfering in any manner with, or coercing, its employees in the exercise of their right to self-organization and representation for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act. The orders also required respondent to offer reinstatement to certain discharged employees, to make good their loss of pay, and to post notices for thirty days that respondent would cease and desist from the practices restrained by the orders. The Circuit Court of Appeals refused to enforce the orders, 85 F. (2d) 1, and this Court granted certiorari.

The proceeding was initiated by the National Labor Relations Board upon charges that the respondent had discharged certain employees because they had engaged in union activities. The Board issued two complaints alleging unfair labor practices within the meaning of the National Labor Relations Act. Notice of hearing was given, Respondent appeared specially and moved to dismiss the complaints upon the grounds that the Act, and the proceedings before the Board, were in contravention of Articles I and III and the First, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Thirteenth Amendments of the Constitution of the United States. Reserving these objections, respondent filed answers denying all the allegations of the complaints except that respondent is a Virginia corporation engaged in the business of manufacturing men's clothing in Richmond. The Board overruled the objections to its jurisdiction and the validity of the Act. For the purpose of presenting the constitutional questions, and to expedite the proceedings, counsel for respondent announced at the beginning of the hearings "that he would not cross-examine any of the Board's witnesses and would not offer any countervailing evidence". The Board received evidence and made its findings. There were numerous objections by respondent to the competency and relevancy of certain testimony.

The Board found: Respondent, a Virginia corporation, has its plant at Richmond, where it is engaged in the purchase of raw materials and the manufacture, sale and distribution of men's clothing. The principal materials are woolen and worsted goods. 99.57 per cent. of these goods come from States other than Virginia, 75 per cent. being purchased in New York and fabricated for the most part in other States. Cotton linings come from several southern States. Particulars as to the sources of other materials are set forth. Of the garments manufactured by respondent, 82.8 per cent. are purchased by customers outside the State, mainly by department stores and men's clothing stores in the larger cities throughout the country. Respondent maintains a sales office and showroom in New York City through which 15 or 20 per cent. of the total sales are made. Orders are sent to the Richmond plant, the goods being sold f.o.b. Richmond. In 1932, the volume of respondent's business amounted to $800,000 and 80,000 units, increasing to $1,750,000 and 150,000 units in the first ten months of 1935.

The Board made elaborate findings with respect to the clothing manufacturing industry and its relation to interstate commerce. Among these findings are the following: The men's clothing industry is among the twenty most important manufacturing industries in this country. 50 per cent. of the manufacturing establishments are in the State of New York; most of the remainder are in Pennsylvania, Maryland, New Jersey, Illinois, Massachusetts, California and Ohio. Since the men's wear fabrics are produced largely in the New England States, the goods must be transported from the mills across state lines to the fabricating establishments in the States above mentioned. The manufactured clothing is sold throughout the nation, only about 48 per cent. of the total sales being made in the seven States which produce about 90 per cent. of the total men's clothing. The findings describe the methods of sales, the New York market being the largest in the country. The Board concluded: "The men's clothing industry is thus an industry which is nearly entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation. There is a constant flow of raw wool from the western States and foreign countries to the mills of New England where it is transformed into men's wear fabrics, thence to the sponging and shrinking plants of New York and Philadelphia, then, joined by the other necessary raw materials, to the fabricating factories of the Middle Atlantic States for manufacture into clothing. . . . The industry itself has no doubt as to its status, for the Executive Director of the New York Clothing Manufacturers Exchange, Inc., which represents about 250 manufacturers doing 70 per cent. of the total business in the New York market, stated in his affidavit that the industry is conducted as an interstate business and is entirely dependent upon interstate commerce".

The Board also made findings in relation to the labor organization here involved. The Board found: "The Amalgamated Clothing Workers of America is a labor organization composed of over 125,000 men and women employed in the men's and boys' clothing industry. . . . The period before the recognition by the employers of the Amalgamated was marked by long and bitter strikes. In 1921 there had been a general strike in New York City which had lasted for eight months and caused losses of millions of dollars to employers and employees. A similar general strike in New York in

1924 lasted for six weeks and involved all of the 500 firms in that area and their 35,000 workers. The wage loss to the workers was nearly $6,000,000, the financial loss to the manufacturers ran into the millions. . . . This costly industrial strife resulted finally in recognition of the Amalgamated by the employers. . . . The New York strike of 1924 was ended by the establishment of a collective agreement between the leading manufacturers and the Amalgamated which was soon joined in by other manufacturers in that area. Factories in Rochester, Baltimore, Boston, Cincinnati, Cleveland, St. Louis and Philadelphia recognized the union and entered into agreements with it. Today the Amalgamated has collective agreements with clothing manufacturers and contractors employing the greater number of the clothing workers in the United States. These collective argreements have brought peace to that portion of the industry that has entered such agreements. . . . Since the signing of the collective agreement for the New York area, the New York Clothing Manufacturers Exchange, Inc. and the Amalgamated have handled jointly a total of 21,193 complaints and disputes. In only 898 of these cases, or slightly over 4 per cent., was a resort to arbitration required because of inability to agree. Of these 898, 30 per cent. were settled by the impartial chairman acting as a mediator; in the remainder he sat as an arbitrator and rendered a decision. . . . The President of the New York Clothing Manufacturers Exchange, Inc. . . . has stated that the 'organization of collective bargaining machinery, the establishment of an impartial tribunal, and the founding of unemployment insurance are the outstanding achievements' in the industry and that the Amalgamated Clothing Workers 'has been perhaps the largest single contributing factor to the lasting peace and harmony that have characterized those clothing markets where the Amalgamated Clothing Workers of America was the other contracting party to the collective agreement' ".

With respect to unfair labor practices, the Board found that in the summer of 1935 employees of respondent had formed a local union of the Amalgamated Clothing Workers of America and were soliciting membership therein. Respondent's management "at once indicated hostility to the union organization of its employees and declared that it would not permit them to join the Amalgamated". Statements of the president of the respondent showing his an-

tagonism to the union were quoted by the Board. At one time he stated to a group of employees that he would discharge every one that attended the union meeting. Similar statements were made by respondent's secretary. Respondent's management "has maintained surveillance over union meetings and activities". The findings set forth the circumstances of the discharge of employees. The Board concluded that these discharges were because of the membership of the employees in the labor organization and their activities in connection with it. The Board also found that interference in the industry with the activities of employees in joining and assisting labor organizations and the refusal to accept the procedure of collective bargaining had led and tends to lead to strikes and other labor disputes that burden and obstruct commerce.

The findings of the Board both as to the nature of respondent's business and the circumstances of the discharge of its employees are supported by the evidence.

For the reasons stated in our opinion in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, decided this day, we hold that the objections raised by respondent to the construction and validity of the National Labor Relations Act are without merit. The decrees of the Circuit Court of Appeals are reversed and the causes are remanded for further proceedings in conformity with this opinion.

It is so ordered.